Readopt with amendments Adm 601.01, effective 5-11-05 (Document #8310), cited and to read as follows:

### CHAPTER Adm 600 PLANT AND PROPERTY MANAGEMENT RULES

### PART Adm 601 GENERAL PROVISIONS

### Adm 601.01 Scope of Rules.

- (a) These rules shall apply only to purchases made through the division, or by the division, or to the other activities conducted by or handled through the division which are the subject of these rules.
- (b) Except as otherwise provided, Adm 604 through Adm 609 of these rules shall not impose obligations or duties upon any agency or purchase which is exempt from the provisions of RSA 21-I under RSA 21-I: 18 or any other authority.
- (c) Except as otherwise provided, Adm 604 through Adm 607 of these rules shall not apply to:
  - (1) The rental of space under Adm 610, which shall be handled in accordance with that part;
  - (2) Service contracts relating solely to a single agency; or
  - (3) Projects handled through or by the division's bureau of public works design and construction.
- (d) Except as otherwise provided, the informal resolution procedures of Adm 609 shall apply only to matters arising through the division's bureau of purchase and property.
- (e) All requests for bids, requests for proposals, requests for quotations and other processes by which acquisitions are made by or through the division are subject to cancellation by the state at any time and these rules shall not be construed to impose any obligation on the part of the state to continue an RFB, RFP, RFQ or other purchasing process once initiated, or to impose an obligation on the part of the state to enter into a particular contract or purchase.

# Readopt with amendments Adm 601.02, effective 5-11-05 (Document #8310), to read as follows:

### Adm 601.02 Purpose of Rules.

- (a) These rules implement RSA: 21-I by:
  - (1) Setting forth requirements for persons or associations wishing to provide the state commodities or services within the scope of these rules;

- (2) Setting forth purchasing and leasing requirements binding on state agencies within the scope of these rules;
- (3) Establishing requirements relative to state and federal surplus programs;
- (4) Establishing plant and property maintenance requirements; and
- (5) Addressing other functions of the division, including the processes for obtaining vendor code numbers and the resolution of purchasing disputes.

## Readopt with amendments Adm 601.03 effective 5-11-05 (Document #8310), to read as follows:

### Adm 601.03 Competitive Bidding.

- (a) Pursuant to RSA 21-I: 11, III, and subject to such exceptions as provided by law, competitive bidding shall be required before the making of any purchase for the state by the division.
- (b) The director shall be responsible for requiring competitive bidding before making purchases except as otherwise provided by RSA 21-I: 11, III.
- (c) Pursuant to RSA 21-I: 11, IV, except where competitive bidding has been employed, no purchase involving an expenditure of more than \$10,000 or purchase in an approved class may be made by the director without the written approval of the commissioner.

# Readopt with amendments Adm 601.04, effective 5-11-05 (Document #8310), to read as follows:

Adm 601.04 <u>Time.</u> Unless otherwise specified, all times expressed by the division, including but not limited to those specifications of time made in the requirements or specifications of a bid, in RFPs, in RFQs, in RFBs, or in any other purchasing requirement, shall be the time in Concord, New Hampshire.

# Readopt with amendments Adm 601.05, effective 5-11-05 (Document #8310), to read as follows:

## Adm 601.05 Waiver of Purchasing Requirements to Prevent Loss of Funds.

- (a) In accordance with RSA 21-I: 18, II, the commissioner of the department of administrative services or his or her designee may waive the provisions of RSA 21-I or these rules relative to purchases when requested by the executive head of any department or agency or his or her designee to prevent the loss of any federal or other funds subject to recapture.
- (b) A waiver under (a) above shall be requested by submitting to the division a written request, which the division shall forward to the commissioner of administrative services, containing, at a minimum:
  - (1) The name, address and telephone number of the agency making the request;
  - (2) The date of the request;
  - (3) A description of the circumstances giving rise to the request;
  - (4) A description of the consequences that are likely to ensue if the request for waiver is not granted; and
  - (5) The signature of the executive head of the department or agency making the request or his or her authorized designee.
- (c) In addition to the written request under (b) above, the agency making the request shall submit to the division a completed requisition form.
- (d) Pursuant to RSA 21-I: 18, II., the commissioner of administrative services shall act upon waiver requests in a timely manner and approval shall not be unreasonably withheld.

### Readopt Adm 601.06, effective 5-11-05 (Document #8310), to read as follows:

Adm 601.06 <u>Standards to Assure Continuation or Granting of Federal Funds or Other Assistance</u>. In addressing grants, contracts and cooperative agreements with the federal government, the division shall adhere to such requirements as are imposed upon it by federal law relating to the programs which it handles, including, those requirements that may be imposed by the United States Office of Management and Budget of the Executive Office of the President in revised Circular A-102, found at 59 FR 52224 and 62 FR 45934, Executive Order 12549, found at 51 FR 6370, and 48 CFR Chapter I, Subpart 9.4 regarding "Debarment, Suspension and Ineligibility."

# Readopt with amendments Adm 601.07, effective 5-11-05 (Document #8310), to read as follows:

## Adm 601.07 Other Exceptions and Waivers.

- (a) Pursuant to RSA 21-I: 17-a, II, and subject to the provisions thereof, upon joint recommendation of the commissioner and the agency, the governor and executive council may authorize an agency to purchase supplies for the agency directly from vendors in such quantities and for such sums as the governor and executive council shall prescribe.
- (b) The commissioner shall waive any provision of Adm 600 if he or she concludes that waiver is necessary:
  - (1) To comply with the law relative to the topics set forth herein; or
  - (2) To achieve the purposes of RSA 21-I.

# Readopt with amendments Adm 602.01, effective 5-11-05 (Document #8310), as amended effective 7-6-09 (Document #9501), cited and to read as follows:

#### PART Adm 602 DEFINITIONS

Adm 602.01 <u>Definitions</u>. In addition to the definitions in RSA 21-I: 11, I, the following definitions shall have the following meanings in this chapter:

- (a) "Activity code" means the number or letters and number assigned by the department of administrative services for the purpose of tracking in the integrated financial system, which identifies the subdivision of an agency that is making a request.
- (b) "Agency" means "agency" as defined in RSA 21-I: 11, I (b), to the extent not exempt or excluded from making purchases or other acquisitions through the division.
- (c) "Agency code" means the number or letters and number assigned by the department of administrative services to identify particular state agencies for the purposes of tracking in the integrated financial system.
- (d) "Apparent low bidder" means the person or association that has been identified by the division as having, subject to final review, apparently submitted the lowest qualified bid on an RFB or RFQ, or as having, subject to final review and scoring, apparently submitted the RFP most likely to be accepted.
- (e) "Appropriation code" means the number or letters and number assigned by the department of administrative services to a particular transaction for the purposes of tracking in the integrated financial system that consists of the company, accounting unit, account and any sub account entry within that system.
- (f) "Association" means a corporation, partnership, limited partnership, trust, joint venture, unincorporated association or other organization or legal entity of any type.

- (g) "Authorized signature" means the signature of a person who may, by operation of law, bind a person or association to a contract.
- (h) "Bidder" means a person or association that submits a timely response to a request for a bid, a request for quotation or a request for proposal.
- (i) "Bidding" means a competitive process in which a person or association responds to an RFB, RFQ or other competitive solicitation by which the state seeks commodities or services.
- (j) "Certified test result" means the result of a test certified as accurate by an independent authority specified by the division.
  - (k) "Close of business" means 4:30 P.M.
  - (1) "Commodities" means materials, supplies, equipment or other tangible items.
- (m) "Commodity code" means the number or letters and number assigned to particular descriptions of commodities or services for the purposes of tracking in the integrated financial system, also known as "certification code."
- (n) "Contact person" means an individual at an agency who has been designated to answer questions from the division or vendor about a requisition and to serve as the agency's main contact regarding a requisition or other matter covered by these rules.
- (o) "Current price" means a conclusion as to price determined by an assessment of the price historically charged for a service or commodity, the price determined by the division to currently be charged by sellers of that service or commodity and any other factors having a bearing upon the value of the service or commodity.
  - (p) "Day" means a calendar day, unless otherwise specified.
  - (g) "DBA name" means a name under which a person or association does business.
  - (r) "Director" means the director of the division of plant and property management.
  - (s) "Division" means the division of plant and property management.
- (t) "Extension price" means the unit price multiplied by the total number of units offered, requested or bid upon.
- (u) "Field purchase order" means an authorization under RSA 21-I: 17-a, I from the director of plant and property management to a governing board of any agency, which authorizes one or more individuals designated by the board to purchase supplies for the agency directly from vendors, provided that the total expenditure does not exceed \$500.
- (v) "Free on board (FOB)" means a method of shipment whereby the seller agrees to assume all costs and expenses associated with delivery to the specified delivery location, including, but not limited to, the cost of any transportation and insurance, without charging the same to the buyer.
- (w) "Forfeited property" means any property, personal or real, lawfully seized by the state, including but not limited to seizures pursuant to RSA 595-A: 6.

- (x) "Fund code" means the number assigned by the department of administrative services to identify the source of funds for the purposes of tracking in the integrated financial system, also known as the designated company entry within that system.
- (y) "Integrated financial system" means the statewide electronic system used by the state to track funds for the purposes of budgeting, financial accounting, financial reporting and financial management.
- (z) "Letter of authority" means a written document, or a copy thereof, signed by the clerk, secretary or other authorized representative of an association indicating that, as of the time of the bid, proposal or other offer, a specific, identified individual is authorized by the association to contractually bind the association and to submit bids, proposals or other offers to the state.
- (aa) "Material data safety sheet" means a writing approved by the United States Department of Health, occupational safety and health association that sets forth health and safety issues relative to a particular commodity.
- (ab) "Material mistake" means an unintentional error that is determined by the division to be essential to the terms of a bid or other offer, without which mistake the bid or other offer would not have been made by the vendor.
- (ac) "Notice of contract" means a statement by the division announcing the specifics of a contract that has been awarded for commodities or services.
- (ad) "Organization code" means the number or letters and number assigned by the department of administrative services to identify a department, bureau or other group within an agency for the purposes of tracking in the integrated financial system, together with the number, or letter and number, if any, which further identifies a specific unit within a department, bureau or other group within the accounting unit of that system.
- (ae) "Other purchasing vendor" means a vendor that is selected or recommended by the division to provide commodities or services to the state of New Hampshire by a method other than competitive bidding under an RFP or RFB, and by a method other than an RFQ. The term includes sole source providers selected or recommended by the division but does not include vendors used by agencies pursuant to a field purchase order or procurement card.
- (af) "Pre-existing state contract" means an agreement with a vendor to provide, upon request by an agency, commodities or services on the basis of terms, conditions and requirements established by the division.
- (ag) "Prepay and add" means a method of delivery and payment in which ownership of the item is not transferred until delivery to a specified site and where shipping costs are to be paid for by the vendor, with the cost of shipping then added to the vendor's invoice for payment by an agency.
- (ah) "Preprinted" means stated on an electronic or hard-copy document prepared and made available by the division.
- (ai) "Purchasing agent" means a person within the division whose responsibility it is to engage in the procurement of commodities and services for the state of New Hampshire and to prepare bid proposals, requirements and specifications.

- (aj) "Request for bid (RFB)" means an invitation identified by the state as an RFB wherein persons or associations are invited to submit an offer to provide specified commodities or services to the state at a price proposed by the bidder.
- (ak) "Request for proposal (RFP)" means an invitation identified by the state as an RFP in which the criteria for selection, or recommendation for selection, are stated in conformity with RSA 21-I: 22-b wherein persons or associations are invited to submit an offer to provide commodities or services to the state in circumstances where the particulars of the commodity or service, as well as the price, are evaluated by the division.
- (al) "Request for quotation" (RFQ)" means an invitation identified by the state as an RFQ wherein persons or associations are invited to provide specified commodities or services to the state at a price proposed by the bidder.
- (am) "Requirements of a bid" means any term or condition of any request for bid, quotation or proposal, proposed agreement or contract, or procedural requirement, other than the specifications of a bid, relating to a particular purchase, bid, quotation or proposal, specified by the state, including:
  - (1) The general conditions and instructions relating to a bid, quotation, proposal, purchase, agreement or proposed bid, contract, purchase or agreement;
  - (2) If the proposed agreement or contract involves services, the general terms and conditions for services sought by the state;
  - (3) The general terms and conditions applicable to bidding, to the submission of proposals or to the provision of commodities or services;
  - (4) The terms of payment, terms of delivery or time of performance relating to any purchase or proposed purchase by the state; and
  - (5) Any provision other than the specifications of the bid relating to a request for bid, quotation, proposal or to the provision of commodities or services to the state.
- (an) "Requisitioner" means the individual authorized by an agency to make a requisition from the division on behalf of an agency.
- (ao) "Requisition form" means the requisition available for use by an agency when requesting the procurement of commodities or services through the state's integrated financial system.
  - (ap) "Requisition number" means an assigned number appearing on a requisition form.
- (aq) "Revenue account code" means a specified numeric code, or letter and number code, assigned by the department of administrative services, for the purpose of tracking revenue received through the integrated financial system.
  - (ar) "Services" means "services" as defined in RSA 21-I: 11, I. (f).
- (as) "Signature" means, unless otherwise specified, a hand written signature or an electronic signature as defined in RSA 294-E: 2, VIII.
- (at) "Sole source provider" means a provider of commodities or services to the state pursuant to RSA 21-I: 11, III (b).

- (au) "Specifications of a bid" means a statement set forth in a request for quotation, a request for proposal, a request for bid, or in any other way, that identifies or describes the details or particulars of a commodity or service that the state wishes to procure.
  - (av) "Split delivery" means delivery of goods by a vendor in more than one shipment.
- (aw) "Third-party certificate of product compliance" means a certification by an independent authority specified by the division stating that the product meets or exceeds product specifications identified in the requirements or specifications of the bid.
- (ax) "Unit price" means the price at which a person or association offers to provide a single item or service to the state.
- (ay) "Vendor" means a person or association that provides, or has provided, commodities or services to the state of New Hampshire.
- (az) "Vendor code number" means an identifying number assigned by the division to a particular vendor, or to a person or association seeking to provide commodities or services to the state of New Hampshire.
- (ba) "Written" means, unless otherwise specified, printed by hand or provided by any other method of representing words and letters, including by electronic means.

Readopt with amendments Adm 603.01, effective 5-11-05 (Document #8310), as amended effective 7-6-09 (Document #9501), cited and to read as follows:

### PART Adm 603 VENDOR CODE NUMBER REQUIREMENTS

#### Adm 603.01 Code Number For Vendors.

- (a) Any person or association seeking to provide commodities or services to the state as a vendor who has not otherwise been assigned a vendor code number shall apply for a vendor code number.
- (b) Only persons or associations possessing a vendor code number shall, unless otherwise specified in the particular requirements of the bid, submit responses to RFPs, RFBs and RFQs.
- (c) Every applicant which does not already possess a vendor code number and which submits the forms described in Adm 603.02 and 603.03 below shall be assigned a vendor code number.
- (d) Requirements relating to vendor code numbers for persons or associations providing space in a building for rent to the state of New Hampshire shall be handled in accordance with the procedures set forth in Adm 610.

## Readopt with amendments Adm 603.02, effective 5-11-05 (Document #8310), to read as follows:

Adm 603.02 <u>Application Procedure for Bidders, Other Purchasing Vendors or Prospective Bidders or Other Purchasing Vendors Seeking to Obtain a Vendor Code Number.</u>

- (a) To apply for a vendor code number under this part, a bidder, a prospective bidder, an other purchasing vendor, or a prospective other purchasing vendor shall submit to the division:
  - (1) A fully executed vendor code number W-9 application form; and
  - (2) A fully executed W-9 form as described in Adm 603.03 below.
- (b) On the vendor code number W-9 application form noted in (a) above, the applicant shall provide the following information in the spaces indicated on the form:
  - (1) The applicant's name as shown on the applicant's federal income tax return, business address, telephone number and e-mail address;
  - (2) The applicant's web site address, mobile telephone number, toll free number; and fax number, if any;
  - (3) Any business name of the applicant, if different from the name identified in (1) above;
  - (4) The name which is to be used in making payments, if any;
  - (5) The name of the particular person, if any, whom the applicant wishes the division to list as a contact and, if different from number (1) above, the business address, telephone number and e-mail address of the contact person;
  - (6) Whether the address to which any billing information or payments, if any, are to be remitted is the same as the address in (1) above and, if not, the address for remittance;
  - (7) The applicant's taxpayer identification number as used on United States Internal Revenue Service tax returns, either in the form of a social security number or federal identification number (EIN/FIN);
  - (8) Whether or not the applicant is a United States business;
  - (9) The state, if any, in which the applicant has been incorporated or organized;
  - (10) Whether or not the applicant has a principal place of business in New Hampshire;

- (11) Whether or not, if required by law, the applicant is registered with the New Hampshire secretary of state as a New Hampshire business;
- (12) Whether or not, if the applicant is an out-of-state business providing services in the state of New Hampshire, the applicant is registered to do business in the state of New Hampshire;
- (13) If registered with the New Hampshire secretary of state, whether or not the applicant is in good standing with the office of the secretary of state;
- (14) Whether the applicant is:
  - a. An individual or sole proprietorship;
  - b. A corporation;
  - c. A partnership;
  - d. A limited liability company and, if so, whether the federal tax classification of the company is either as:
    - 1. A corporation;
    - 2. A partnership; or
    - 3. A disregarded entity under 26 CFR part 301 of the United States Internal Revenue regulations;
  - e. A governmental entity;
  - f. An estate or trust; or
  - g. An other form of organization;
- (15) Whether the applicant is:
  - a. A non-profit organization and, if so, a copy of the organization's tax exemption document;
  - b. A legal services provider; or
  - c. A health care provider;
- (16) Whether the applicant's principal activities are as:
  - a. A service provider;
  - b. A product or merchandise provider; or
  - c. Another type of provider;

- (17) An identification of the commodities or services which the applicant proposes to provide to the state, identified by the names of the commodities or services and the commodity code number of those commodities or services;
- (18) Any special instructions, explanations, international phone numbers, or comments which the applicant wishes to provide;
- (19) The signature of the applicant on a statement provided on the form stating that:
  - a. The person submitting the form is duly authorized to do so on behalf of the applicant;
  - b. The information provided on the vendor's application form is true, accurate and complete;
  - c. The applicant certifies to the foregoing subject to penalty of perjury under the laws of the United States and subject to the applicable penalties of RSA 641:1 through 3; and
  - d. The applicant acknowledges that, pursuant to RSA 641:3, knowingly making a false representation on the application form is punishable as a crime; and
- (20) The name of the person signing the form, his or her position in the applicant business and the date of the signature described in (19) above.

# Readopt with amendments Adm 603.03, effective 5-11-05 (Document #8310), to read as follows:

### Adm 603.03 Submission of W-9 Form.

(a) Individuals or associations seeking to obtain a vendor code number under Adm 603.02 (a) or to provide goods or services to the state shall, in addition to executing and submitting the vendor code number - W-9 application form described in Adm 603.02 file, a fully executed "Request for Taxpayer Identification Number and Certification" form issued by the United States department of the treasury pursuant to 26 USC 6109, commonly known as a W-9 form.

# Readopt with amendments Adm 603.04, effective 5-11-05 (Document #8310), to read as follows:

Adm 603.04 <u>Vendor Code Number List.</u> The division shall maintain a list of persons and associations who have been assigned vendor code numbers, which list shall be used solely as a

record-keeping device and shall not be deemed by the department to constitute a vendor's license or similar form of permission under RSA 541-A:1, VIII.

## Readopt with amendments Adm 603.05, effective 5-11-05 (Document #8310), to read as follows:

Adm 603.05 Updating of Information by Applicants for a Vendor Code Number.

- (a) Persons or associations who have applied for or been issued a vendor code number shall immediately submit a written correction of any information appearing on, or filed in conjunction with, a vendor's code number W-9 application form which is not accurate, or which becomes inaccurate.
- (b) An individual or authorized representative of an association submitting a correction under (a) above shall:
  - (1) Sign and date the document; and
  - (2) Certify by the person's signature that:
    - a. The person submitting the correction is duly authorized to do so on behalf of the applicant;
    - b. The information provided in order to correct the vendor's application is true, accurate and complete;
    - c. The applicant certifies to the foregoing subject to penalty of perjury under the laws of the United States and subject to the applicable penalties of RSA 641:1 through 3; and
    - d. Pursuant to RSA 641:3, the person acknowledges that knowingly making a false representation on the correction of the vendor's application form is punishable as a crime.

Readopt with amendments Adm 604.01, effective 5-11-05 (Document #8310), cited and to read as follows:

PART Adm 604 BIDDING REQUIREMENTS

Adm 604.01 Bids, Quotations and Proposals Generally.

- (a) In each RFP, RFQ or RFB subject to these rules, the division shall specify in the requirements or specifications of the bid, which of the following is required of bidders:
  - (1) A written price quotation; or
  - (2) A written bid or proposal.
- (b) All RFBs, RFPs, RFQs and other processes by which acquisitions are made by or through the division are subject to cancellation by the state at any time and these rules shall not be construed by any bidder to impose any obligation on the part of the state to continue an RFB, RFP, RFQ or other purchasing process once initiated, or to impose an obligation on the part of the state to enter into a particular contract or purchase.

## Readopt with amendments Adm 604.02, effective 5-11-05 (Document #8310), to read as follows:

## Adm 604.02 Procedural Requirements for Bids, Quotations and Proposals.

- (a) Except to the extent otherwise provided in the requirements of the bid, bids, quotations and proposals subject to these rules shall be submitted to the division in a writing including all sheets, sides or pages of the form described in Adm 604.07, Adm 604.08 or Adm 604.09 which contain information provided by the bidder, or such other alternate form specified in the requirements of the bid, together with all sheets, sides or pages of any addenda or attachments thereto which contain information provided by the bidder.
- (b) A bidder's signature on the forms noted in (a) above, or such other alternative document specified in the requirements of the bid, shall constitute an acceptance of all of the terms of the requirements and specifications of the bid, including but not limited to the contract terms and conditions, general conditions for bidding, general conditions and instructions and general terms and conditions for services, if any, specified on, or made part of, the forms, including those terms which are to apply if the bidder is selected to provide commodities or services to the state.
- (c) The contents of the forms described in Adm 604.07, Adm 604.08 or Adm 604.09, or such other alternative document specified in the requirements of the bid, or the contents of the terms, conditions or other requirements or specifications of the bid, quotation or proposal, including those relating to quantity and delivery, shall not be altered, modified, deleted or excepted to by a bidder except by utilizing the procedures set forth at Adm 604.03, and provided that alterations, modifications, deletions or exceptions may be withdrawn to the extent allowed under Adm 604.03 (d) and Adm 606.01 (k).
- (d) Bids, quotations and proposals shall be submitted to the division on or before the date and time specified by the division for the submission of bids or proposals or for the receipt of quotations, except that if state offices are closed because of inclement weather, unforeseen circumstances, or any other reason, bids, quotations and proposals due on that date shall be accepted by the close of business on the next business day.

- (e) Bids, quotations and proposals shall be submitted in conformity with all requirements of the bid, including any provisions relating to the sealing of bids, quotations or proposals, and in conformity with the specifications of the bid and all applicable rules.
- (f) If facsimile transmissions, electronic submissions other than facsimile transmissions, or a combination thereof, are not prohibited under the requirements or specifications of the particular bid, bids, quotations or proposals submitted by facsimile transmission or other electronic transmission shall:
  - (1) In order to be timely, be submitted, and actually be received, on or before the date and time set for the receipt of bids, quotations or proposals;
  - (2) Be in accordance with the requirements of the bid, the specifications of the bid and the provisions of these rules;
  - (3) Be legible; and
  - (4) Include a signed copy of a all pages of a document described at Adm 604.07, Adm 604.08 or Adm 604.09 below, as specified by the division, which contain information provided by the bidder, or such other alternative document as specified in the requirements of the bid, together with any addenda or attachments thereto which contain information provided by the bidder.
- (g) For the purposes of (f) above, the time of receipt shall be the time that the full transmission is received by the division.
- (h) For the purposes of (f) and (g) above, if the time of receipt as recorded by the sender's facsimile or electronic transmission equipment differs from the time of receipt of the facsimile or electronic transmission as recorded by the division's equipment, the time recorded by the division's equipment shall control.
- (i) Except as otherwise provided herein, facsimile and other electronic transmissions shall be subject to the same provisions of these rules, including those relating to correction and cure, as would apply to hard-copy submissions.
- (j) Bidders shall be responsible for submitting any bid, quotation or proposal that is in the form of a facsimile or other electronic transmission in a manner that is, and at such a time that the division's receipt of the submission is, in accordance with these rules.
- (k) Bids, quotations and proposals shall be accompanied by a letter of authority, if such letter of authority is requested in the requirements or specifications of the bid.
- (1) If a request for bid, a request for quotation or a request for proposal requires the submission of samples, or if the bidder provides items for demonstration purposes, the bidder shall submit such items free of charge and shall deliver, install, remove and properly dispose of, any such items free of charge at the date and time specified in the requirements or specifications of the bid or otherwise.
- (m) Sample and demonstration units provided under (l) above shall not be offered to the state as a new commodity and, unless otherwise specified in the requirements or specifications of the bid, the state shall not return samples or items left for demonstration purposes that have not been removed by the bidder.

- (n) The amount of bids or proposals shall not include the amount of any state or federal tax from which the state is exempted by law.
  - (o) Bids, quotations and proposals shall not be transferable.
  - (p) Bids, quotations and proposals shall be signed in accordance with Adm 604.06 below.
- (q) All monetary amounts expressed in bids, quotations, proposals or other offers to sell commodities or services to the state shall be expressed in United States dollars and all monetary transactions with the state shall be conducted in United States dollars.
- (r) Bids, quotations or proposals shall be signed by a person authorized to bind the bidder to the terms of the bid, quotation or proposal.
  - (s) Bids, quotations or proposals shall be legible.
  - (t) Bids quotations or proposals shall be written in English.
- (u) If requested in the invitation for bid, quotation or proposal, the bidder shall supply the bureau of the division which issued the invitation for bid, quotation or proposal with certified test results, third-party certificates of product compliance, or the results of independent laboratory testing to confirm compliance with any specifications of a bid, quotation or proposal, the costs of which shall be the responsibility of the bidder.
- (v) After submission of a bid, quotation or proposal, a bidder shall make no change to price or other matter that a bidder is required to specify in response to a particular RFB, RFP or RFQ, except to the extent which may be allowed in the context of final offer negotiations under Adm 606.02, and provided that a bidder may withdraw bids in full if allowed under Adm 606.07.

# Readopt with amendments Adm 604.03, effective 5-11-05 (Document #8310), to read as follows:

## Adm 604.03 Requests for Changes to Bids, Quotations and Proposals.

- (a) Persons or associations shall submit bids, quotations or proposals as specified by the requirements or specifications of the bid, but any person, association or agency may request changes to those requirements or specifications by submitting the requested changes to the division in writing.
- (b) Requests for changes to the requirements or specifications of an RFB or RFP shall be granted if:
  - (1) Such proposed changes are made in writing;
  - (2) Such proposed changes are received by the division no less than 5 business days before the date scheduled for the submission of the proposals or bids, unless otherwise specified by the division; and

## (3) The division concludes:

- a. That the change would not affect the original scope or purpose of the requirements or specifications of the RFB or RFP;
- b. That the change would not conflict with any applicable law, regulation or rule other than the rule stating that a bidder must submit bids in accordance with the particular requirement or specification sought to be altered;
- c. That the change would enable the state to meet its business needs in a more timely, efficient or cost-effective manner or in a manner that is otherwise more advantageous to the state than would the original requirements;
- d. If the change relates to the contract terms and conditions, general conditions for bidding, general conditions and instructions, general terms and conditions for services or any legal term or condition appearing on a document provided by the division:
  - 1. That it has been submitted by the division to, and has been reviewed by the New Hampshire department of justice; and
  - 2. That it is desirable in view of the foregoing factors and any review conducted by the New Hampshire department of justice; and
- e. If the change relates to the specifications of a bid, that one or more of the agencies that are to receive the commodity or service concurs with the change after consultation with the division.
- (c) Requests for changes to a request for quotation shall be granted only if such proposed changes:
  - (1) Are specifically allowed, and to the extent and at such time as specifically allowed, in the requirements or specifications of the particular bid; and
  - (2) Meet the criteria of (b) (3) through (4) above.
- (d) If a bidder has altered, modified, deleted or taken exception to the preprinted contents of a form utilized to submit the bid, quotation or proposal, or to any of the requirements or specifications of a bid, quotation or proposal without utilizing the procedures of (b) or (c) above, the bidder may, in writing, withdraw the alteration, deletion, modification or exception in full:
  - (1) In the case of an RFP or RFB, within 5 business days of the opening of bids or proposals, or, after that time, within 3 business days of notification of the nonconformity by the division; or
  - (2) In the case of an RFQ, immediately upon notice of the nonconformity by the division.
- (e) The provisions of (d) above and Adm 606.01 (k) relative to withdrawal of alterations, deletions, modifications or exceptions to requirements or specifications of a bid shall not be construed to imply an ability on the part of the bidder to withdraw a bid, quotation or proposal after the date and time for submission of bids quotations or proposals, requests for which shall be handled in accordance with Adm 606.07.

# Readopt with amendments Adm 604.04, effective 5-11-05 (Document #8310), as amended effective 7-6-09 (Document #9501), to read as follows:

Adm 604.04 <u>Disqualification</u>. Unless the disqualifying nonconformity is subject to correction and cure, and is corrected and cured, a bid, quotation or proposal shall not be qualified if:

- (a) The bid, quotation or proposal is not filed by the date and time specified in the requirements or specifications of the bid, or, in the case of inclement weather, any extended period allowed under Adm 604.02 (d);
- (b) Except to the extent changes have been allowed pursuant to Adm 604.03, the bid, quotation or proposal is not submitted in a writing including all sheets, sides or pages of the form described in Adm 604.07, Adm 604.08 or Adm 604.09, as specified by the division, which contain information provided by the bidder, or such other, alternate form specified in the requirements of the bid, together with all sheets, sides or pages of any addenda or attachments thereto which contain information provided by the bidder;
- (c) The bid, quotation or proposal is made by an association and is not accompanied by a letter of authority, if a letter of authority is requested in the requirements or specifications of the bid;
- (d) The bid, quotation or proposal is made to the state by a person other than an individual identified in a letter of authority, if a letter of authority is requested in the requirements or specifications of the bid;
  - (e) The quotation, bid or proposal is not signed in accordance with Adm 604.06;
- (f) The person or association is not, if required by law, registered with the New Hampshire secretary of state and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (g) The person or association is not, if registered with the New Hampshire secretary of state, in good standing with the office of the secretary of state and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (h) The person or association, or any of its subsidiaries, affiliates or principal officers, has, within the 2 years prior to the bid, quotation or proposal, been convicted of, or pleaded guilty to, a violation of RSA 356:2, RSA 356:4 or any state or federal law or county or municipal ordinance prohibiting specified bidding practices, or involving antitrust violations, which has not been annulled and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;

- (i) The person or association, or any of its subsidiaries, affiliates or principal officers, provided false, deceptive or fraudulent information on a vendor code number application form described in Adm 603.02, or on any other document at any time submitted to the state of New Hampshire, which information has not, as of the time of the filing of the bid, quotation or proposal, been corrected and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (j) If the bid, quotation or proposal involves federal funds, the person or association does not meet any requirement or criteria imposed by the federal government relative to those funds and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (k) The person or association, or any of its subsidiaries, affiliates or principal officers is at the time of the filing of the bid, quotation or proposal, subject to any order of the New Hampshire department of labor, the New Hampshire department of employment security, or any other state department, agency, board or commission, finding that the applicant is not in compliance with the requirements of the laws that the department, agency, board or commission is charged with implementing and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (1) The person or association, or any of its subsidiaries, affiliates or principal officers is at the time of the filing of the bid, quotation or proposal, subject to any sanction or penalty finally issued by the New Hampshire department of labor, the New Hampshire department of employment security, or any other state department, agency, board or commission, which sanction or penalty has not been fully discharged or fulfilled and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (m) The person or association includes in the bid, quotation or proposal the amount of any state or federal tax from which the state is exempt under federal or state law;
- (n) Monetary figures contained in the bid, proposal or quotation are not expressed in United States dollars;
  - (o) The bid, quotation or proposal purports to be transferable;
- (p) The person or association submitting a bid, quotation or proposal is not the person or association that will be providing commodities or services to the state under the bid, quotation or proposal;
- (q) The person or association submitting a bid, quotation or proposal is not the person or association that will be responsible for complying with the terms and conditions of any contract entered into with the state;
- (r) If the request for bid, quotation or proposal requires the submission of samples, or if demonstration units are provided, the person or association fails to submit items free of charge or fails to deliver, install, remove and properly dispose of any items free of charge;
- (s) The person signing the bid, quotation or proposal is not authorized to bind the bidder to the bid, quotation or proposal;
  - (t) The bid, quotation or proposal is not legible;

- (u) The bid, quotation or proposal is not written in English;
- (v) Any items appearing to be a correction to a price offered in a particular bid, quotation or proposal are not, before filing, initialed by an authorized representative of the bidder;
- (w) Unless otherwise specified by the requirements or specifications of the bid, or unless otherwise agreed to by the division, the general conditions for bidding, the terms and conditions of any contract or proposed contract, the content of the applicable form described at Adm 604.07, Adm 604.08 or Adm 604.09, or such alternate form specified in the requirements of the bid, or the terms, conditions or any other requirement or specification of the bid, quotation or proposal, including those relating to quantity and delivery, is changed by the bidder except by utilizing the procedures set forth at Adm 604.03, and provided that alterations, modifications, deletions or exceptions may be withdrawn to the extent allowed under 604.03 (d) and 606.01 (k);
- (x) If requested in the invitation for bid or proposal, the bidder does not supply the bureau of the division which issued the invitation for bid, quotation or proposal, with certified test results, third-party certificates of product compliance, or the results of independent laboratory testing, or declines to pay the cost of such tests or certificates;
- (y) Sample or demonstration units are offered by the bidder to the state as new commodities;
- (z) The bidder does not abide by, or agree to abide by, these rules or any of the requirements or specifications of the bid;
- (aa) Contrary to Adm 604.02 (v), the bidder makes a change to price or other matter that the bidder is required to specify in a bid, quotation or proposal;
  - (ab) The bidder does not possess a vendor code number;
- (ac) The person or association, or any of its subsidiaries, affiliates or principal officers, is, at the time of the filing of the bid, quotation or proposal, prohibited, either permanently or temporarily, from participating in any public works project pursuant to RSA 638: 20, and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (ad) The person or association, or any of its subsidiaries, affiliates or principal officers is at the time of the filing of the bid, quotation or proposal, debarred from performing work on any project of any state other than the state of New Hampshire, and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase, or the person or association, or any of its subsidiaries, affiliates or principal officers is, at the time of the filing of the bid, quotation or proposal, debarred from performing work on any project of the federal government or the state of New Hampshire;
- (ae) The person or association, or any of its subsidiaries, affiliates or principal officers has, within the 2 years prior to the filing of the bid, quotation or proposal, failed to cure a default on any contract with the federal government or the government of any state, and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (af) The person or association, or any of its subsidiaries, affiliates or principal officers is, at the time of the filing of the bid, quotation or proposal, serving a sentence or subject to a

continuing or unfulfilled penalty for any crime or violation noted in RSA 21-I: 11-c, and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;

- (ag) The bidder has, as of the time of the filing of the bid, quotation or proposal, failed or neglected to advise the division of any conviction, plea of guilty or finding relative to any crime or violation noted in RSA 21-I: 11-c, or of any debarment, within 30 days of such conviction, plea, finding or debarment, if the bidder possessed a vendor code number at the time of such conviction, plea, finding or debarment, and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (ah) The person or association, or any of its subsidiaries, affiliates or principal officers has been placed on the debarred parties list specified in RSA 21-I: 11-c, II within the past year;
- (ai) The bidder fails to submit the affidavit required by RSA 21-I: 11-c, I (b), described in Adm 604.07 (d) below;
- (aj) The bidder's affidavit described in Adm 604.07 (d) below is false, and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (ak) The bidder's affidavit described in Adm 604.07 (d) below is signed by a person who is not authorized by the bidder to do so, and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase; or
  - (al) The bidder fails to submit a sealed bid if, and as, sealed bids are specified.

## Readopt with amendments Adm 604.05, effective 5-11-05 (Document #8310), to read as follows:

#### Adm 604.05 Review of Bids, Quotations and Proposals, Including Correction and Cure.

- (a) Unless the process is cancelled by the state, following the submission of a bid, quotation or proposal, the division shall review timely bids, quotations or proposals received for conformity with these rules and the requirements and specifications of the bid.
- (b) Bids, quotations or proposals that are not conforming because they have not been timely filed will not be considered by the division.
- (c) In the case of an RFB, unless the process is cancelled by the state, the division shall, in writing, notify apparent low bidders submitting timely bids which, on initial review, do not appear to conform to these rules and the requirements of the bid of:
  - (1) Nonconformities which are subject to correction and cure;
  - (2) What, if any, additional or corrected information may be submitted to bring the bid into conformity, and

- (3) The deadline by which such information must be received, which deadline shall, unless otherwise specified in the notice, be by the close of business on the third business day after the date of the notice.
- (d) In the case of an RFP, unless the process is cancelled by the state, the division shall in, writing, notify persons or associations submitting timely proposals which, on initial review, do not appear to conform to these rules and the requirements of the bid of:
  - (1) Nonconformities which are subject to correction and cure;
  - (2) What, if any, additional or corrected information may be submitted to bring the proposal into conformity; and
  - (3) The deadline by which such information must be received, which deadline shall, unless otherwise specified in the notice, be by the close of business on the third business day after the date of the notice.
  - (e) If, by the deadline established under (c) or (d) above:
    - (1) The person or association notified submits materials or corrections that bring a bid, or proposal into conformity with these rules and the requirements of the bid as specified, the division shall, unless the process is cancelled by the state, process the bid or proposal as if the bid or proposal had originally been in conformity therewith; or
    - (2) The person or association notified does not submit materials or corrections as specified that bring the bid or proposal into conformity with these rules and the requirements of the bid, the division shall finally disqualify the bid, or proposal and, unless the process is cancelled by the state, process the matter as if the bid or proposal had not been submitted;
  - (f) RFQs shall be handled in the manner set forth in (c) and (e) above, except that:
    - (1) Notification under (c) above shall be either oral or in writing; and
    - (2) Any submission to bring the quotation into conformity with these rules and the requirements of the bid shall be submitted immediately upon request.
- (g) The division shall not consider any bid or proposal which is not in conformity with these rules and the requirements of the bid after the time specified in the notification under (c) or (d) above, nor shall it consider any quotation which is not brought into conformity immediately upon request.
- (h) Bids, quotations or proposals that are not in conformity with these rules or the requirements of the bid due to the absence of a required signature shall be handled in accordance with Adm 604.06 below.
- (i) Initial review of the conformity of bids, quotations and proposals to the requirements and specifications of the bid and to these rules, and disqualification, shall, if not completed earlier, take place during the selection process described at Adm 606.01.

- (j) The following items which disqualify a bid, quotation or proposal on initial review shall not be subject to correction and cure by a bidder:
  - (1) Failure to file the bid, quotation or proposal by the date and time specified in the requirements or specifications of the bid or, in the case of inclement weather, any extended period allowed under Adm 604.02 (d);
  - (2) Except to the extent that changes have been allowed pursuant to Adm 604.03 or to the extent otherwise provided in the requirements of the bid, failure to submit the bid, quotation or proposal in a writing including all sheets, sides or pages of the form described in Adm 604.07, Adm 604.08 or Adm 604.09, or such alternative document specified in the requirements of the bid, as specified by the division, which contain information provided by the bidder;
  - (3) The person or association, or any of its subsidiaries, affiliates or principal officers, having, within the 2 years prior to the bid, quotation or proposal, been convicted of, or pleaded guilty to, a violation of RSA 356:2, RSA 356:4 or any state or federal law or county or municipal ordinance prohibiting specified bidding practices or involving antitrust violations which has not been annulled, under the circumstances described in Adm 604.04 (h);
  - (4) The person or association, or any of its subsidiaries, affiliates or principal officers, having provided false, deceptive or fraudulent information on a vendor code number application form described in Adm 603.02, or on any other document at any time submitted to the state of New Hampshire, which information has not, as of the time of the filing of the bid, quotation or proposal, been corrected, under the circumstances described in Adm 604.04 (i);
  - (5) If the bid, quotation or proposal involves federal funds, the person or association's failure to meet any requirement or criteria imposed by the federal government, under the circumstances described at Adm 604.04 (j);
  - (6) The person or association, or any of its subsidiaries, affiliates or principal officers having been, at the time of the filing of the bid, quotation or proposal, subject to any order of the New Hampshire department of labor, the New Hampshire department of employment security, or any other state department, agency, board or commission, finding that the applicant is not in compliance with the requirements of the laws that the department, agency, board or commission is charged with implementing under the circumstances described in Adm 604.04 (k);
  - (7) The person or association, or any of its subsidiaries, affiliates or principal officers having been, at the time of the filing of the bid, quotation or proposal, subject to any sanction or penalty finally issued by the New Hampshire department of labor, the New Hampshire department of employment security, or any other state department, agency, board or commission, which sanction or penalty has not been fully discharged or fulfilled under the circumstances described in Adm 604.04 (1);
  - (8) The person or association having included in the bid, quotation or proposal the amount of any state or federal tax from which the state is exempt under federal or state law:
  - (9) The failure to express monetary figures contained in the bid, proposal or quotation in United States dollars;

- (10) The bid, quotation or proposal purporting to be transferable;
- (11) The person or association submitting a bid, quotation or proposal being a person or association other than that which will be providing commodities or services to the state under the bid, quotation or proposal;
- (12) The person or association submitting a bid, quotation or proposal being a person or association other than that which will be responsible for complying with the terms and conditions of any contract entered into with the state;
- (13) The bid, quotation or proposal not being legible;
- (14) The bid, quotation or proposal not being written in English;
- (15) A bidder's alteration, modification, deletion, or exception to the content of the forms, terms, conditions, or other requirements or specifications of the bid, quotation or proposal, including those relating to quantity and delivery, except by utilizing the procedures set forth at Adm 604.03, and provided that alterations, modifications, deletions or exceptions may be withdrawn to the extent allowed under Adm 604.03 (d) and Adm 606.01 (k);
- (16) Unless otherwise specified in the requirements of the bid, the bidder offers sample or demonstration units to the state as new commodities;
- (17) After submission of a bid, quotation or proposal, the bidder's alteration of price or other matter that a bidder is required to specify submitted in a particular response to an RFB, RFP or RFQ, except to the extent which may be allowed in the context of final offer negotiations under Adm 606.02, and provided that a bidder may withdraw bids in full if allowed under Adm 606.07;
- (18) The person or association, or any of its subsidiaries, affiliates or principal officers having, at the time of the filing of the bid, quotation or proposal, been prohibited, either permanently or temporarily, from participating in any public works project pursuant to RSA 638: 20 under the circumstances described in Adm 604.04 (ac);
- (19) The person or association, or any of its subsidiaries, affiliates or principal officers having, at the time of the filing of the bid, quotation or proposal, been debarred from performing work on any project of any state other than the state of New Hampshire under the circumstances described in Adm 604.04 (ad) or the person or association, or any of its subsidiaries, affiliates or principal officers having, at the time of the filing of the bid, quotation or proposal, been debarred from performing work on any project of the federal government or the state of New Hampshire;
- (20) The person or association, or any of its subsidiaries, affiliates or principal officers having, within 2 years prior to the filing of the bid, quotation or proposal, failed to cure a default on any contract with the federal government or the government of any state under the circumstances described in Adm 604.04 (ae);
- (21) The person or association, or any of its subsidiaries, affiliates or principal officers, at the time of the filing of the bid, quotation or proposal, serving a sentence

- or being subject to a continuing or unfulfilled penalty for any crime or violation noted in RSA 21-I: 11-c under the circumstances described in Adm 604.04 (af);
- (22) The bidder, at the time of the filing of the bid, quotation or proposal, having failed or neglected to advise the division of any conviction, plea of guilty or finding relative to any crime or violation noted in RSA 21-I: 11-c, or of any debarment, within 30 days of such conviction, plea, finding or debarment under the circumstances described in Adm 604.04 (ag);
- (23) The person or association, or any of its subsidiaries, affiliates or principal officers has been placed on the debarred parties list specified in RSA 21-I: 11-c, II within the year prior to the filing of the bid, quotation or proposal;
- (24) The bidder's affidavit described in Adm 604.07 (d) below is false under the circumstances described in Adm 604.04 (aj);
- (25) Failure to submit a sealed bid if, and as, sealed bids are specified; and
- (26) Any other matter not curable under the requirements of the bid.
- (k) Unless the process is cancelled by the state, the division shall, after the period set forth in RSA 21-I: 13-a, II, notify bidders, other than those submitting RFQs, of their disqualification, if any, by posting the name of the bidder and the fact of its disqualification on the division's web site.
- (l) Following the date and time established for the submission of bids, quotations or proposals, a bidder shall not alter the material submitted except to the extent that:
  - (1) The bidder has been notified by the division of, and is responding to, the existence of a defect that is subject to cure;
  - (2) The change consists of the withdrawal of an alteration, modification, deletion or exception allowed under Adm 604.03 (d) and Adm 606.01 (k); or
  - (3) The change is the result of final offer negotiations under Adm 606.02.

## Readopt with amendments Adm 604.06, effective 5-11-05 (Document #8310), to read as follows:

Adm 604.06 Signing of Bids, Quotations and Proposals.

(a) Bids, quotations or proposals submitted to the division shall bear an authorized signature on the document prescribed by the division for the particular purchase described at Adm 604.07, Adm 604.08 or Adm 604.09, or such other alternate document specified in the

requirements of the bid, as well as on any other document on which the requirements of the bid specify that a signature is required.

- (b) In the case of a bid, quotation or proposal received by the division without the signatures required by (a) above, unless the process is canceled by the state, the division shall notify the bidder of the failure to sign and of the time by which signed materials must be received.
- (c) Unless another date is specified by the division in order to address issues of timing associated with the bid or proposal, a bidder who has failed to sign a bid or proposal in accordance with (a) above may file a signed version of the applicable document described at Adm 604.07, Adm 604.08 or Adm 604.09, or any other document on which a signature may be required, within 3 business days of the day that notice is issued under (b) above.
- (d) The division shall not consider any bid, or proposal which remains unsigned after the time specified in the notice under (b) above.
- (e) To be considered by the division, a bidder which has submitted a quotation not containing a signature in compliance with (a) above shall file a signed version of the applicable document immediately upon request.

## Readopt with amendments Adm 604.07, effective 5-11-05 (Document #8310), to read as follows:

### Adm 604.07 Bid Form.

- (a) Unless another, alternative document is specified in the requirements of the bid, bids, other than bids for services, which shall be submitted according to Adm 604.08, shall be submitted in a writing including all sheets, sides or pages of a bid invitation form provided by the division which sets forth or incorporates the general terms, conditions and provisions that apply to the bid.
  - (b) On the form noted in (a) above, the bidder shall provide:
    - (1) The name of the company, person or association placing the bid;
    - (2) The address of the bidder;
    - (3) The local telephone number of the bidder;
    - (4) The toll free telephone number of the bidder, if any;
    - (5) The fax number of the bidder;
    - (6) The e-mail address of the bidder, if any;

- (7) The website address of the bidder, if any;
- (8) A description of the item offered;
- (9) The quantity of units offered;
- (10) Delivered unit and extension prices; and
- (11) The following information regarding the contact person:
  - a. Name:
  - b. Telephone number; and
  - c. Toll free telephone number, fax number, e-mail address and company web site, if any;
- (c) The bidder shall:
  - (1) Sign the form, utilizing an authorized signature;
  - (2) Provide the name of the signer in print or typescript; and
  - (3) Certify by signing that:
    - a. The bidder accepts the state's terms and conditions that apply to the particular bid and any resulting purchase order or contract and that any other terms and conditions submitted by the bidder are null and void;
    - b. The bidder will be subject to the terms and conditions stated on the purchase order relating to purchase; and
    - c. The bidder offers to sell to the state of New Hampshire the commodities or services indicated at the price or prices quoted and in compliance with the requirements and specifications of the bid.
- (d) In addition to the foregoing, pursuant to 21-I: 11-c, the bidder shall, as part of his or her bid submission, certify by notarized affidavit, signed under oath, that neither the bidder, nor any of its subsidiaries, affiliates or principal officers:
  - (1) Has, within the past 2 years, been convicted of, or pleaded guilty to, a violation of RSA 356:2, RSA 356:4, or any state or federal law or county or municipal ordinance prohibiting specified bidding practices, or involving antitrust violations, which has not been annulled;
  - (2) Has been prohibited, either permanently or temporarily, from participating in any public works project pursuant to RSA 638:20;
  - (3) Has previously provided false, deceptive, or fraudulent information on a vendor code number application form, or any other document submitted to the state of New Hampshire, which information was not corrected as of the time of the filing a bid, proposal, or quotation;

- (4) Is currently debarred from performing work on any project of the federal government or the government of any state;
- (5) Has, within the past 2 years, failed to cure a default on any contract with the federal government or the government of any state;
- (6) Is presently subject to any order of the New Hampshire department of labor, the New Hampshire department of employment security, or any other state department, agency, board, or commission, finding that the applicant is not in compliance with the requirements of the laws or rules that the department, agency, board, or commission is charged with implementing;
- (7) Is presently subject to any sanction or penalty finally issued by the New Hampshire department of labor, the New Hampshire department of employment security, or any other state department, agency, board, or commission, which sanction or penalty has not been fully discharged or fulfilled;
- (8) Is currently serving a sentence or is subject to a continuing or unfulfilled penalty for any crime or violation noted in this section;
- (9) Has failed or neglected to advise the division of any conviction, plea of guilty, or finding relative to any crime or violation noted in this section, or of any debarment, within 30 days of such conviction, plea, finding, or debarment; or
- (10) Has been placed on the debarred parties list specified in Adm 606.11 within the past year.

#### Repeal Adm 604.08, effective 5-11-05 (Document #8310), as follows:

#### Adm 604.08 Proposal Form.

- (a) Unless another, alternative document is specified in the requirements of the bid, proposals, other than proposals for services which shall be handled according to Adm 604.09, shall be submitted in writing on an original, or on an exact copy of all sheets and sides, of a request for proposal form provided by the division which sets forth or incorporates the general terms, conditions and provisions that apply to the proposal.
  - (b) On the form noted in (a) above, the bidder shall provide:
    - (1) The name of the company, person or association placing the proposal;
    - (2) The address of the bidder;
    - (3) The local telephone number of the bidder;
    - (4) The toll free telephone number of the bidder, if any;

- (5) The fax number of the bidder; and
- (6) The e-mail address of the bidder, if any.
- (c) The bidder shall:
  - (1) Sign the form, utilizing an authorized signature;
  - (2) Provide the typewritten or printed name of the signer; and
  - (3) Certify by signing that:
    - a. The bidder agrees to the state's terms and conditions that apply to the particular proposal and any resulting purchase order or contract, and that any other terms and conditions submitted by the bidder are null and void;
    - b. The bidder will be subject to the terms and conditions stated on the purchase order relating to purchase; and
    - c. The bidder offers to sell to the state of New Hampshire the commodities or services indicated at the price or prices quoted and in compliance with the requirements and specifications of the bid.

Readopt with amendments and renumber Adm 604.09, effective 5-11-05 (Document #8310), as amended effective 7-6-09 (Document #9501), as Adm 604.08 to read as follows:

Adm 604.08 Service Contract Proposal Transmittal Letter Form.

- (a) Unless another, alternative document is specified in the requirements of the bid, service contract proposals, other than proposals for the rental of space which shall be submitted in accordance with Adm 610, shall be submitted in a writing including all sheets, sides, or pages of a service contract proposal transmittal letter form provided by the division which sets forth or incorporates the general terms, conditions and provisions that apply to the proposal.
  - (b) On the form noted in (a) above, the bidder shall state in the spaces provided:
    - (1) The name of bidder;
    - (2) The address of the bidder;
    - (3) The fax and telephone number of the bidder;
    - (4) The e-mail address of the bidder, if any;
    - (5) The printed name of the signer;
    - (6) The date;

- (7) The bidder's contact person; and
- (8) The proposal number, type of service and price.
- (c) The bidder shall:
  - (1) Submit a fully-executed form;
  - (2) Sign the form, utilizing an authorized signature;
  - (3) Submit its proposal in conjunction with the form;
  - (4) Provide the typewritten or printed name of the signer; and
  - (5) Certify by signing that the bidder offers to sell to the state of New Hampshire the services indicated at the price or prices quoted, in compliance with the requirements or specifications of the bid, and according to the provisions and representations specified by the state in the transmittal letter form.
- (d) If a bidder submitting the form described above is recommended by the division to provide services, the bidder shall, unless the process is cancelled by the state, and if the transaction is to be consummated by the state, execute the agreement form specified in Adm 604.10 below.
- (e) In addition to the foregoing, pursuant to 21-I:11-c, the bidder shall, as part of his or her bid submission, submit a notarized affidavit, signed under oath, as described in Adm 604.07 (d) above.

# Readopt with amendments and renumber Adm 604.10, effective 5-11-05 (Document #8310), as Adm 604.09, to read as follows:

### Adm 604.09 Request for Quotation Form.

- (a) When requesting a quotation from vendors, the division shall utilize a form which sets forth or incorporates the general terms, conditions and provisions applicable to the quote.
- (b) On the form described in (a) above, the person or association submitting the quote or to whom the request for quotation is directed shall, if that person or association wishes to place a quotation, provide:
  - (1) A description of the item or items offered, including the quantity and item brand or part number;
  - (2) The price of each item, together with the extension price;

- (3) The name of the bidder;
- (4) The bidder's address;
- (5) The bidder's telephone number;
- (6) The authorized signature of the person or association responding to the RFQ;
- (7) The bidder's fax number; and
- (8) The e-mail address of the bidder.
- (c) In addition to the foregoing, pursuant to 21-I:11-c, the bidder shall, as part of his or her bid submission, submit a notarized affidavit, signed under oath, as described in Adm 604.07 (d) above.

# Readopt with amendments and renumber Adm 604.11, effective 5-11-05 (Document #8310), as Adm 604.10, to read as follows:

Adm 604.10 <u>Agreements Relative to Multi-agency Services Originating with Requests for Proposals.</u> In the case of service contracts involving services to more than one agency that originated with a request for proposal:

- (a) The division shall recommend to the commissioner a vendor according to the procedures set forth in Adm 606; and
- (b) In the event that a bidder submitting a service contract proposal form under Adm 604.08 is selected to provide services, the bidder shall execute such standard agreement form as may be designated by the governor and executive council.

# Readopt with amendments Adm 605.01, effective 5-11-05 (Document #8310), as amended effective 7-6-09 (Document #9501), cited and to read as follows:

#### PART Adm 605 ADDITIONAL RULES REGARDING OTHER PURCHASING VENDORS

Adm 605.01 <u>Disqualifying Factors.</u> No other purchasing vendor shall be selected to provide commodities or services through the division if:

- (a) The person or association does not possess a vendor code number;
- (b) The person or association has not filed, or does not file, a fully executed form W-9;

- (c) The person or association, or any of its subsidiaries, affiliates or principal officers, has, within the past 2 years, been convicted of, or pleaded guilty to a violation of RSA 356:2, RSA 356:4 or any state or federal law or county or municipal ordinance prohibiting specified bidding practices or involving antitrust violations which has not been annulled and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (d) The person or association, or any of its subsidiaries, affiliates or principal officers, provided false, deceptive or fraudulent information on a vendor code number application form described in Adm 603.02, or on any other document at any time submitted to the state of New Hampshire, which information has not, as of the time of the anticipated provision of services, been corrected and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (e) The commodity or service being provided is to be procured in whole or in part by the use of federal funds, and the person or association does not meet any requirement or criteria imposed by the federal government relative to those funds and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (f) The person or association, or any of its subsidiaries, affiliates or principal officers, is presently subject to any order of the New Hampshire department of labor, the New Hampshire department of employment security, or any other state department, agency, board or commission, finding that the applicant is not in compliance with the requirements of the laws that the department, agency, board or commission is charged with implementing and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (g) The person or association, or any of its subsidiaries, affiliates or principal officers, is presently subject to any sanction or penalty finally issued by the New Hampshire department of labor, the New Hampshire department of employment security, or any other state department, agency, board or commission, which sanction or penalty has not been fully discharged or fulfilled and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (h) The person or association does not remove from purchase price of the commodity or service the amount, if any, of any state or federal tax from which the state is exempt under federal or state law;
- (i) The person or association does not express the purchase price of the commodity or service in United States dollars;
  - (i) The provision of the commodity or service purports to be transferable;
- (k) The person or association providing the commodity or service is not the person or association that will be providing the commodity or service;
- (l) The person or association providing the commodity or service is not the person or association that will be responsible for complying with the terms and conditions of any contract entered into with the state:
- (m) The offer to provide commodities or services is made to the state by a person other than the individual with whom the state will be contracting and other than an individual identified

in a letter of authority, if requested in the requirements or specifications relating to the provision of the commodity or service;

- (n) The person or association is not, if required by law, registered with the New Hampshire secretary of state and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (o) The person or association is not, if registered with the New Hampshire secretary of state, in good standing with the office of the secretary of state and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (p) If the purchase involves a requirement that the person or association agree to stated specifications or requirements, including but not limited to standard contract terms and conditions, general conditions and instructions, general terms and conditions for commodities or services, the person or association fails to agree to, abide by or seeks to alter those requirements or specifications without first obtaining the approval of the division;
- (q) The person or association, or any of its subsidiaries, affiliates or principal officers is prohibited, either permanently or temporarily, from participating in any public works project pursuant to RSA 638: 20 and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (r) The person or association, or any of its subsidiaries, affiliates or principal officers is currently debarred from performing work on any project of any state other than the state of New Hampshire, and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase, or the person or association or any of its subsidiaries, affiliates or principal officers is currently debarred from performing work on any project of the federal government or the state of New Hampshire;
- (s) The person or association, or any of its subsidiaries, affiliates or principal officers, has within 2 years prior to the time of the completion of the contract or purchase, failed to cure a default on any contract with the federal government or the government of any state, and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (t) The person or association, or any of its subsidiaries, affiliates or principal officers, are serving a sentence or are subject to a continuing or unfulfilled penalty for any crime or violation noted in RSA 21-I: 11-c, and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (u) The person or association failed or neglected to advise the division of any conviction, plea of guilty or finding relative to any crime or violation noted in RSA 21-I: 11-c, or of any debarment, within 30 days of such conviction, plea, finding or debarment, and the purchasing agent handling the acquisition has been actually notified or possesses actual knowledge of this fact prior to the completion of the contract or purchase;
- (v) Within the year prior to the completion of the contract or purchase, the person or association, or any of its subsidiaries, affiliates or principal officers was placed on the debarred parties list specified in RSA 21-I: 11-c, II;

## Readopt Adm 605.02, effective 5-11-05 (Document #8310), to read as follows:

Adm 605.02 <u>Acceptance of Terms</u>. The provision of commodities or services by an other purchasing vendor shall constitute acceptance of any requirements or specifications set forth in Adm 605.01 (p) above, the terms stated on any purchase order or other document used to procure the commodity or service, and the provisions of Adm 605.03 below.

## Readopt with amendments Adm 605.03, effective 5-11-05 (Document #8310), to read as follows:

Adm 605.03 Procedural Requirements for Other Purchasing Vendors.

- (a) If the submission of samples is required in connection with a purchase, or if a prospective vendor provides items for demonstration purposes, the person or association shall:
  - (1) Submit such items free of charge; and
  - (2) Deliver, install, remove and properly dispose of such items free of charge, at the date and time specified in the purchase order or contract.
- (b) Sample and demonstration units provided under (a) above shall not be offered to the state as a new commodity and, unless otherwise specified in the requirements of the purchase order or contract, the state shall not return samples or items left for demonstration purposes that have not been removed by the person or association which provided them.
- (c) The total amount of the offer submitted by a person or association seeking to provide commodities or services as an other purchasing vendor shall not include the amount of any state or federal taxes from which the state is exempted by law.
- (d) The monetary amounts expressed in any offer submitted by a person or association seeking to provide commodities or services as an other purchasing vendor shall be expressed in United States dollars and all monetary transactions with the state shall be conducted in United States dollars.
- (e) If requested by the division, a person or association seeking to provide commodities or services as an other purchasing vendor shall supply the bureau of the division which issued the invitation for bid, quotation or proposal with certified test results, third-party certificates of product compliance, or the results of independent laboratory testing to confirm compliance with any specifications.
- (f) The costs of the certificates and testing specified by (e) above shall be the responsibility of the person or association seeking to provide commodities or services as an other purchasing vendor.

Readopt with amendments Adm 606.01, effective 5-11-05 (Document #8310), cited and to read as follows:

PART Adm 606 SELECTION, RECOMMENDATION, POST-SELECTION AND OTHER PURCHASING PROCEDURES

Adm 606.01 Bidder Selection or Recommendation Procedure.

- (a) All RFBs, RFPs, RFQs and other processes by which acquisitions are made by or through the division are subject to cancellation by the state at any time and these rules shall not be construed to impose any obligation on the part of the state to continue an RFB, RFP, RFQ or other purchasing process once initiated, or to impose an obligation on the part of the state to enter into a particular contract or purchase.
- (b) The division shall, following, or at the time of, an initial determination of qualifications under Adm 604, including an assessment of whether the bid, quotation or proposal adheres to the requirements of the bid, determine:
  - (1) In the case of an initially qualified apparent low bidder on an RFB or RFQ that is not cancelled by the state, or the next lowest bidder if that apparent low bidder should be disqualified:
    - a. Whether the bid or quotation is in conformity with the specifications and requirements of the bid and applicable rules; and
    - b. If federal funding is involved in the award of the bid or quotation, whether the bid or quotation or the person or association submitting the bid, or quotation meets federal requirements and qualifications relative to the acquisition;
  - (2) In the case of initially qualified responses to RFPs that are not cancelled by the state:
    - a. Whether each of the proposals submitted are in conformity with the specifications and requirements of the bid and applicable rules; and
    - b. If federal funding is involved in the award of the proposal, whether the proposals or the persons or associations submitting the proposals meet federal requirements and qualifications relative to the acquisition.
- (c) Unless otherwise specified in the requirements or specifications of the bid, in the case of an RFB or RFQ, selection or recommendation of a prospective vendor shall, if the process is not cancelled by the state, be made of the qualified bidder meeting the requirements of (b) (1) above whose bid or quotation meets the requirements of the bid and meets or exceeds specifications at the lowest price.
- (d) Unless otherwise specified in the requirements or specifications of the bid, in the case of an RFP, selection or recommendation of a prospective vendor shall, if the process is not cancelled by the state, be made of the qualified bidder meeting the requirements of (b) (2) above which has submitted a conforming RFP meeting or exceeding specifications and according to the criteria for selection set forth in the RFP.

- (e) If there is a discrepancy between the unit price and the extension price in a response to an RFP, RFB or RFO, the unit price shall be binding upon the bidder.
- (f) When identical and qualified low bids, proposals or quotations are received at the same price, selection or recommendation of a prospective vendor shall, if the process is not cancelled by the state, be made by drawing lots, provided that, pursuant to RSA 21-I: 11-b, II:
  - (1) If only one of the vendors offering that price has a principal place of business in New Hampshire, that vendor shall, if the process has not been cancelled by the state, be selected or recommended for selection; and
  - (2) When qualified lowest bids, proposals or quotations are received at the same price from more than one vendor which has a principal place of business in New Hampshire, selection or recommendation for selection shall, if the process is not cancelled by the state, be made by drawing lots from among the vendors with a principal place of business in New Hampshire.
- (g) Pursuant to RSA 21-I: 13-a, II, no information shall be available to the public, the members of the general court or its staff, notwithstanding the provisions of RSA 91-A: 4, concerning specific invitations to bid or other proposals for public bids, from the time the invitation or proposal is made public until the bid is actually awarded.
- (h) In the case of contracts or purchases which are not submitted to the governor and executive council for approval, unless the process is cancelled by the state, the division shall, following the period set forth in RSA 21-I: 13-a, II, make public the name of a vendor selected in response to an RFB or RFP by posting the name of the vendor on the division's web site.
- (i) The posting under (h) above shall consist of a summary containing, at a minimum, the name of each bidder timely submitting a response to the RFP or RFB, and the amount of each bid not disqualified.
- (j) The successful bidder on an RFQ shall be notified by the division either orally or in writing.
- (k) The alteration, modification, deletion or exception by an apparent low bidder to the preprinted contents of a form utilized to submit the bid, quotation or proposal, or to the requirements or specifications of the bid, quotation or proposal without utilization of the procedures of Adm 604.03 shall not preclude the selection of that bidder as a vendor if:
  - (1) In the case of an RFP or RFB, and unless another date is specified by the division in order to address issues of timing associated with the bid or proposal, that bidder withdraws its alteration, modification, deletion or exception in full and in writing within 3 business days of any notification of the nonconformity by the division; or
  - (2) In the case of an RFQ, that bidder withdraws its alteration, modification, deletion or exception in full and in writing immediately upon notification of the nonconformity by the division.
- (1) The provisions of (k) above and Adm 604.03 (d) relative to withdrawal of alterations, deletions, modifications or exceptions to requirements or specifications of a bid shall not be construed to imply an ability on the part of the bidder to withdraw a bid, quotation or proposal

after the date and time for submission of bids, quotations or proposals, requests for which shall be handled in accordance with Adm 606.07.

(m) A prospective vendor shall not enter into a contract or transaction with the state unless that prospective vendor has filed W-9 form as specified in Adm 603.03 and possesses a vendor code number.

# Readopt with amendments Adm 606.02, effective 5-11-05 (Document #8310), to read as follows:

### Adm 606.02 Final Offer Negotiations.

- (a) If, following the selection or recommendation of a prospective vendor in response to an RFB, RFP or RFQ, it does not appear that the price offered for the commodity or service is equal to or less than the current market price for the commodity or service, the division shall, unless the process is cancelled by the state, contact the bidder and negotiate for the bidder's lowest final price.
- (b) If, prior to or after selecting a vendor by means of a process other than competitive bidding, it does not appear that the price offered for the commodity or service is equal to or less than the current price for the commodity or service, the division shall, unless the process is cancelled by the state, contact the vendor or prospective vendor and negotiate for the person or association's lowest final price.

## Readopt with amendments Adm 606.03, effective 5-11-05 (Document #8310), to read as follows:

## Adm 606.03 Cancellation of Selection Process.

- (a) The division or commissioner shall at any time in the process cancel any RFB, RFP, RFQ, or purchase conducted by means of a process other than competitive bidding, and shall decline to award or recommend award of a bid, quotation or proposal, or to select or recommend selection of a vendor, when the division or commissioner concludes that the continuation of the particular selection process is not in the best interests of the state of New Hampshire.
- (b) For the purposes of (a) above, the division or commissioner shall cancel, or decline to award or select, or recommend award or selection, if the division or commissioner concludes either that:
  - (1) Such action is warranted so as to avoid the potential that commodities or services of an unacceptable quality, price, type, method of delivery, or other term of purchase will be provided to the state;
  - (2) Such action is warranted under the terms of the particular RFP, RFQ, RFB or purchase;

- (3) Such action is warranted so as to enable an agency to fulfill its mission, or for the state to maximize the effective use of funds or other resources:
- (4) Such action is required in view of funding constraints;
- (5) Such action would be likely to enable the state to address its needs in a more timely, efficient or cost-effective manner than would continuation of the process;
- (6) Such action is warranted so as to comply with statutory law, case law, or these rules, or to advance the purposes of RSA 21-I or these rules; or
- (7) Such action is otherwise warranted to foster the integrity of the process.
- (c) Cancellation under the foregoing paragraphs shall not preclude the division from issuing a new RFB, RFP or RFQ, or from initiating a new process for the selection of a vendor by means other than competitive bidding, in regard to the matter cancelled.

### Readopt Adm 606.04, effective 5-11-05 (Document #8310), to read as follows:

### Adm 606.04 Delivery.

- (a) No payment shall be made to a vendor that makes delivery in a manner contrary to these rules, contrary to the requirements or specifications of the bid, or contrary to the terms or conditions of the purchase order, the contract, or any other document establishing delivery terms, if that vendor does not remedy such failure upon request.
- (b) Deliveries shall be inspected after receipt and shall not be deemed accepted until compliance with these rules, the laws applicable to purchasing and the requirements or specifications of the bid have been established.
- (c) Goods that are delivered in a damaged condition shall not be accepted and the vendor shall assume all costs and expenses associated with the return of those goods.
- (d) The vendor shall, at its sole expense, immediately replace any goods delivered in a damaged condition.
- (e) The signature of state personnel on shipping documents shall signify only the receipt of the shipment signed for.
- (f) If a vendor is unable to complete delivery by the date specified in the requirements or specifications of the bid, the bid form, the purchase order or other communication identifying the date required for delivery, the vendor shall, as soon as such inability is known, notify the agency seeking the commodity or service.
- (g) An agency which receives notification under (f) above shall not be required to accept a delay in the original delivery date and may instead cancel the purchase.
- (h) Vendors shall provide material safety data sheets with the delivery of any and all products covered by RSA 277-A, the Worker's Right to Know Act.

- (i) Unless otherwise specified in the requirements or specifications of the bid or other term or condition of purchase, delivery shall be made FOB to the destination specified in the requirements or specifications of the bid.
- (j) Unless otherwise specified in the requirements or specifications of the bid or other term or condition of purchase, costs associated with the delivery, including but not limited to all customs duties, tariffs, and fees for shipping and handling shall be the responsibility of the bidder.

#### Readopt Adm 606.05, effective 5-11-05 (Document #8310), to read as follows:

Adm 606.05 <u>Vendor Responsibility for Costs on Default</u>. If a vendor fails to furnish items in accordance with all requirements or specifications of the bid or other term or condition of purchase, including delivery terms, and if the purchasing agent is, as a result thereof, compelled to purchase similar items from another source with or without competitive bidding, the original vendor shall be liable to the state for any excess costs.

# Readopt with amendments Adm 606.06, effective 5-11-05 (Document #8310), to read as follows:

#### Adm 606.06 <u>Invoicing Requirements</u>.

- (a) The vendor shall submit a separate invoice for each order showing the contract number or purchase order number, unit and extension prices, as well as all discounts allowed.
- (b) Unless otherwise stated in the requirements or specifications of the bid, payment shall not be due until 30 days after the invoice has been received at the agency business office or all items have been delivered, inspected and accepted by the agency, whichever is later.
- (c) Discounts shall not be considered in making awards but may be offered by the vendor, and accepted by the division, for early payment on an invoice.
- (d) The date from which the calculation of early payment for the purposes of a discount under (c) above shall be made shall be the date of completion of delivery or the date of receipt of the invoice, whichever is later.
- (e) In orders specifying split deliveries, the date from which the calculation of early payment for the purposes of a discount under (c) above shall be made shall be the date of completion of each delivery or the date of receipt of each invoice, whichever is later.

## Readopt with amendments Adm 606.07, effective 5-11-05 (Document #8310), to read as follows:

#### Adm 606.07 Withdrawal of Bids and Other Offers.

- (a) If a bid, proposal, quotation or any other offer to provide commodities or services to the state of New Hampshire contains a material mistake, or if withdrawal is allowed under the requirements or specifications of the bid or any other requirement established by the division, the vendor making the bid, quotation, proposal or other offer may, by no later than the close of business on the fifth business day after the date of the opening of the bid, quotation, proposal or other offer, or such other date, if any, specified by the division, request that the bid, proposal, quotation or other offer be withdrawn.
  - (b) A request under (a) above shall:
    - (1) Be in writing; and
    - (2) Contain a narrative setting forth:
      - a. The nature of the mistake or an identification of the provision that allows withdrawal;
      - b. The reason that the mistake was made or that the withdrawal is requested;
      - c. Why the mistake is material, or the reasons for concluding that withdrawal is allowed under the requirements or specifications of the bid or other requirements relative to the purchase established by the division; and
      - d. The reasons, if any, that the mistake occurred despite the vendor's use of care in the making of the bid, quotation, proposal or other offer.
- (c) The director or his or her designee shall, within 5 days of the submission of a request for withdrawal, grant a request for the withdrawal of a bid, quotation, proposal or other offer if the director or his or her designee concludes either that:
  - (1) The mistake is material and allowance of withdrawal either:
    - a. Would advance the purposes of RSA 21-I;
    - b. Is required in the interests of the integrity of the process; or
    - c. Would be in the best interests of the state, by avoiding the potential that commodities or services of an unacceptable quality or delivery will be provided by the vendor, or otherwise; or
  - (2) The withdrawal is allowed under the requirements or specifications of the bid.

- (d) The burden shall be on the vendor to demonstrate to the director in its written submission that withdrawal should be allowed.
- (e) Permission to withdraw a bid, quotation or proposal shall not be required if the withdrawal is made prior to the date and time established for the submission of bids, quotations or proposals.
- (f) Withdrawal of one bid, quotation or proposal prior to the date and time established for the submission of bids, quotations or proposals shall not preclude a bidder from submitting another bid, quotation or proposal prior to the date and time established for the submission of the same.
- (g) Bids, quotations or proposals shall not be withdrawn by a bidder after the date and time established for the submission of the bid, quotation or proposal except to the extent allowed under (c) above.

## Readopt with amendments Adm 606.08, effective 5-11-05 (Document #8310), to read as follows:

Adm 606.08 <u>Commodities or Services Provided Prior to Specified Date or Without Prior Requisition.</u>

- (a) Goods provided or services undertaken by a vendor prior to the date specified for performance of any contract or purchase order shall be at the vendor's sole risk and, in the event that the contract or purchase order shall not become effective, the state shall not reimburse the vendor for such work.
- (b) Except in urgent situations as described at Adm 607.07, agency requisitions shall not be processed by the division for commodities or services which have already been supplied.

#### Readopt Adm 606.09, effective 5-11-05 (Document #8310), to read as follows:

Adm 606.09 <u>Assignments and Subcontracts</u>. A vendor shall not assign or otherwise transfer any interest in any agreement or contract with the state without the prior written consent of the state, and no work required by any contract or agreement with the state shall be subcontracted without the prior written consent of the state.

## Readopt with amendments Adm 606.10, effective 5-11-05 (Document #8310), to read as follows:

Adm 606.10 <u>Awards Not To Be Made by Line Item</u>. Unless otherwise specified in the requirements or specifications of the bid, or other requirement or specification regarding the terms of the purchase, if an RFP, RFQ, RFB or other form of purchasing request contains reference to more than one item, vendors shall be selected or recommended on the basis of the selection criteria as applied to the RFP, RFB, RFQ or other purchasing request as a whole, rather than by applying those criteria to each individual item or line item sought by the state.

#### Adopt Adm 606.11 to read as follows:

#### Adm 606.11 Debarment of Vendors.

- (a) This section shall apply to all bids, proposals or quotations in response to a request for bid, proposal, or quotation issued by any bureau or subunit of the division of plant and property management but, pursuant to RSA 21-I: 11-c, VII, shall not apply to bids, quotations or proposals which may be issued, received or reviewed by the department of transportation on behalf of the division's bureau of public works design and construction.
- (b) Pursuant to 21-I:11-c, no individual or business entity shall make a bid, proposal or quotation in response to a request for bid, proposal, or quotation issued by the division if that individual or entity, or any of its subsidiaries, affiliates or principal officers are subject to the prohibitions, limitations or conditions listed in RSA 21-I: 11-c, I. (a).
- (c) All individuals or business entities submitting a bid, proposal or quotation in response to a request for bid, proposal or quotation issued by the division shall, as part of their response, provide an affidavit as described in Adm 604.07 (d).
- (d) Pursuant to RSA 21-I: 11-c, I (b), failure to submit the affidavit noted in (c) above, the filing of a false affidavit or the signing of an affidavit by an unauthorized person shall result in the automatic rejection of the bid, proposal or quotation.
- (e) Individuals or entities which are identified on the list described in RSA 21-I: 11-c, II shall be debarred from submitting bids, quotations, or proposals to the division.
- (f) Inclusion on the debarred parties list shall be accomplished in accordance with the processes set forth in RSA 21-I: 11-c.

Readopt with amendments Adm 607.01, effective 5-11-05 (Document #8310), as amended effective 7-6-09 (Document #9501), cited and to read as follows:

## PART Adm 607 PURCHASING REQUIREMENTS FOR STATE AGENCIES

Adm 607.01 <u>Types of Requisition Forms; Additional Approvals Required for Information</u> Technology Purchases.

- (a) An agency shall requisition commodities by completing one of the forms described in (c), (d) or (e) below.
- (b) Services for general agency use within the meaning of RSA 21-I:11, I., (f) shall be requisitioned by completing:
  - (1) For services not covered by a preexisting state contract, the form described at Adm 607.05 below; or
  - (2) For services covered by a preexisting state contract, either:
    - a. The form described at Adm 607.04 below; or
    - b. Such other means of requisition as is authorized in the preexisting state contract, the notice of award of contract or other writing specifying how purchases are made under a pre-existing state contract.
- (c) Agencies shall requisition commodities valued at a total cost of over \$500 which are not covered by a preexisting state contract, as well as commodities valued at a total cost of \$500 or under for which no field purchase order or procurement card authorization has been given, by fully executing and submitting to the division the form described at Adm 607.05 below.
- (d) Agencies shall requisition commodities that are covered by a preexisting state contract either by:
  - (1) Fully executing and submitting to the division the form described at Adm 607.04 below; or
  - (2) Such other means as is authorized in the preexisting state contract, the notice of award of contract or other writing specifying how purchases are made under a pre-existing state contract.
- (e) To the extent authorized by the director pursuant to RSA 21-I: 17-a, requisitions for commodities valued at a total cost of \$500 or under shall be handled according to Adm 607.06.
- (f) An agency shall submit requests for purchases of information technology equipment or software in excess of the amount specified in RSA 21-I: 11, XI. to the chief information officer for approval through the processes of the state's integrated financial system.
- (g) The department of information technology shall submit to the division any approvals by the chief information officer or his or her designee for the information technology purchases described in RSA 21-I: 11, XII.

# Readopt with amendments Adm 607.02, effective 5-11-05 (Document #8310), as amended effective 7-6-09 (Document #9501), to read as follows:

### Adm 607.02 Brand Justification Requests.

- (a) In cases in which an agency wishes to acquire a specific brand, make, or model of product, wishes to engage the services of a particular provider, or wishes to obtain a commodity made by a particular manufacturer for purchases valued at a total price of over \$500, the agency shall:
  - (1) State on the requisition form the names and addresses of suggested vendors that have furnished the agency with information about the commodity or service; and
  - (2) Submit to the division a brand justification request.
- (b) A brand justification request under (a) (2) above shall be included by the agency as a note or comment on the requisition form, or as a writing attached to the requisition form, when that form is submitted to the state's integrated financial system, and include:
  - (1) An explanation of why the specific brand, make or model of product, the services of a particular provider or the commodity of a particular manufacturer, is requested; and
  - (2) An explanation of why other brands, makes, models, providers or manufacturers would not be acceptable.
- (c) The division shall grant the agency's brand justification request if it concludes that the specified brand, make or model of product, the services of a particular provider or the commodity of a particular manufacturer either:
  - (1) Is required for the agency making the request to fulfill its mission;
  - (2) Is required in order to preserve the health or safety of agency personnel or other persons; or
  - (3) Is necessary in view of the agency's or state's possession of existing equipment or other commodities which would be rendered non-functional if a brand, make or model of product other than that specified were acquired.
- (d) Neither the existence of an established relationship between a vendor and an agency, nor an agency's possession of commodities of a particular make, model or brand, shall, standing alone, be sufficient grounds to grant a brand justification request.

## Readopt with amendments Adm 607.03, effective 5-11-05 (Document #8310), as amended effective 7-6-09 (Document #9501), to read as follows:

Adm 607.03 Sole Source Requests.

- (a) Pursuant to RSA 21-I: 11, III. (b), in cases in which an agency believes that any required commodity or service is procurable from only one source or seller, the agency shall:
  - (1) State as a note or comment submitted with or attached to the requisition form the name and address of the suggested vendor that it believes is the only source of the commodity or service; and
  - (2) Submit a sole source request to the division through the state's integrated financial system.
  - (b) A sole source request under (a) (2) above shall:
    - (1) Be included by the agency as a note or comment on the requisition form, or as a writing attached to the requisition form, when that form is submitted to the state's integrated financial system; and
    - (2) Include a statement of why the agency believes that the suggested vendor is the sole source of the commodity or service requested.
- (c) The commissioner shall grant the agency's sole source request if, pursuant to RSA 21-I: 11, III. (b), reasonable investigation confirms that the requested commodity or service is procurable from only one source or seller.

### Readopt with amendments Adm 607.04, effective 7-6-09 (Document #9501), to read as follows:

Adm 607.04 Requisitions for Contract Items.

- (a) An agency requisitioning goods or services under a pre-existing state contract shall do so on a numbered requisition available through the state's integrated financial system.
- (b) The head of the department, or such agent or agents authorized by the agency to make the requisition, shall approve the requisition prior to submission to the division through the state's integrated financial system.

## Readopt Adm 607.05, effective 7-6-09 (Document #9501), to read as follows:

Adm 607.05 Requisitions for Noncontract Items Over \$500.

- (a) An agency requisitioning goods that are not under a state contract and that are valued at over \$500 shall do so on a numbered requisition available through the state's integrated financial system.
- (b) The head of the department, or such agent or agents authorized by the agency to make the requisition, shall approve the requisition prior to submission to the division through the state's integrated financial system.

# Readopt with amendments Adm 607.06, effective 5-11-05 (Document #8310), as amended effective 7-6-09 (Document #9501), to read as follows:

Adm 607.06 Field Purchase Orders and Procurement Cards.

- (a) Pursuant to RSA 21-I:17-a, I., the director may, upon written request of an agency, authorize the agency to purchase supplies directly from vendors by the use of field purchase orders as described in (b) below, or by the use of procurement cards issued for that purpose, provided that the amount of the total expenditure is \$500 or less.
- (b) On a pre-numbered field purchase order form, an agency requisitioning goods under (a) above shall provide:
  - (1) The date of the field purchase order;
  - (2) The date by which the commodity or service is required;
  - (3) Under the heading "ACTIVITY CODE," the applicable activity code, if any;
  - (4) Under the heading "APPROPRIATION CODE," the full appropriation code for the purchase;
  - (5) Under the heading "JOB NUMBER," the number, if any, used by an agency to further track expenditures;
  - (6) Under the heading "COMMODITY CLASS NO.," the commodity code number;
  - (7) Under the heading "BILL TO," the name and address of the agency that is to receive the bill for the requisition;
  - (8) Under the heading "SHIP TO," the name and address to which delivery is to be made;
  - (9) Under the heading "VENDOR," the name and the address of the vendor that is to provide the commodity or service;
  - (10) Under the heading "VENDOR CODE," the vendor code number of the vendor that is to provide the commodity or service;
  - (11) Under the heading "VENDOR TEL. NO.," the telephone number of the vendor that is to provide the commodity or service;

- (12) Under the heading "CONTRACT NO.," the number assigned by the division to the preexisting state contract, if any, under which the request for commodities or services is being made by the agency;
- (13) Under the column heading "QTY," the number of units of each type of commodity or service requested by the agency;
- (14) Under the column heading "UNIT," the unit used to calculate quantity, such as gallon, dozen, gross, case, pound or other unit of measurement;
- (15) Under the column heading "DESCRIPTION," a description of each type of commodity or service requested;
- (16) Under the column heading "UNIT PRICE," the unit price of each type of commodity or service requested;
- (17) Under the column heading "EXTENSION," the extension price;
- (18) Under the heading "DOCUMENT TOTAL," the combined total of all requests made on the form, expressed in dollars;
- (19) Under the heading "SHIPPING INSTRUCTIONS," whether:
  - a. Ownership of the item is not to transfer until delivery to a specified site and shipping costs are to be paid for by the vendor, with the cost of shipping then added to the vendor's invoice for payment by the agency, indicated by checking the box entitled "PREPAY & ADD;"
  - b. Delivery is to be made FOB to the agency's location, indicated by checking the box entitled "FOB DESTINATION;" and
  - c. There are special shipping or delivery instructions, indicated by checking the box entitled "SPECIAL" and providing a written description of those instructions; and
- (20) Under the heading "RECEIVED BY, IF AGENCY PICKUP," the signature of the person who picks up the item from the vendor, if the item is picked up by the agency from the vendor's location.
- (c) The head of the department making the field purchase, or the authorized agent of the requesting agency, shall:
  - (1) Sign the form;
  - (2) Provide his or her telephone number on the form; and
  - (3) Certify by signing the form that the purchase is made in accordance with RSA 21-I: 11 and RSA 21-I: 17-a.
- (d) In addition to the foregoing, the agency shall provide on the field purchase order form the name and telephone number of a contact person within the agency.
- (e) The contents of the contract terms and conditions appearing on the field purchase order shall not be altered by the vendor, the prospective vendor or the agency.

- (f) No agency shall order the same item from the same vendor by using 2 or more consecutive field purchase orders, or by making 2 or more purchases by use of a procurement card, in such a way as to split orders which total more than \$500.
- (g) A field purchase order shall not be utilized to requisition items under a preexisting state contract unless specifically stated on the notice of contract.
- (h) In those situations involving purchases of \$500 or less where the use of a field purchase order or procurement card has not been authorized by the director, the agency shall make purchases by utilizing:
  - (1) The requisition form described at Adm 607.04 for items that are part of a preexisting state contract; or
  - (2) The requisition form described at Adm 607.05 for items that are not part of a pre-existing state contract.
- (i) Performance by a vendor under, or delivery by a vendor of a commodity requested under, a field purchase order shall constitute the acceptance by the vendor of the contract terms and conditions appearing on the reverse of field purchase order.

# Readopt with amendments Adm 607.07, effective 5-11-05 (Document #8310), as amended effective 7-6-09 (Document #9501), to read as follows:

### Adm 607.07 Urgent Situations.

- (a) When, in the agency's opinion, an immediate purchase is necessary, the agency shall contact the purchasing agent by way of e-mail or other writing, giving all information about the purchase and the circumstances requiring immediate action, including:
  - (1) The items required;
  - (2) The quantity;
  - (3) The source of supply;
  - (4) Prices;
  - (5) Payment terms; and
  - (6) Appropriation code.
- (b) If the division concurs that an immediate purchase is necessary for the agency to fulfill its mission or to maximize the effective use of state funds, it shall assign a purchase order number.
- (c) If the need for an immediate purchase occurs outside normal state working hours, the agency may proceed with the purchase and the procedure described in this rule shall be accomplished on the next business day.

## Readopt Adm 607.08, effective 5-11-05 (Document #8310, as Adm 607.09), to read as follows:

Adm 607.08 Changes to Quantity or Scope in Purchase Orders, Requisition Forms and Proposed Contracts.

- (a) The quantity of items or scope of services contained or incorporated in any purchase order, proposed contract or requisition form produced by the division shall not be altered by the agency without prior approval of the division.
- (b) An agency may request changes to the matters noted in (a) above by submitting a request for such changes in writing to the division.
  - (c) The division shall deny changes under (a) above if granting the changes would:
    - (1) Alter the purchase by a value of 50% or more of the original value of the purchase order or contract; or
    - (2) Would violate the competitive bidding requirements of RSA 21-I.

### Readopt with amendments Adm 607.09, effective 7-6-09 (Document #9501), to read as follows:

Adm 607.09 Requisitions for Used Items. An agency shall requisition a used item on the requisition form, by indicating, in addition to the other required information, that the item required is a used item.

#### Readopt Adm 607.10, effective 7-6-09 (Document #9501), to read as follows:

Adm 607.10 Purchases Involving Federal Funding. In cases involving a requisition by an agency for commodities or services which will be funded in whole or in part by federal funds, whether or not the purchase will be by way of an RFP, RFQ, RFB, sole source purchase or other method of purchase, the agency shall advise the division that the purchase involves federal funds by identifying on the requisition form submitted through the state's integrated financial system that the purchase involves federal funds.

#### Adopt Adm 607.11 to read as follows:

Adm 607.11 <u>Waivers of Purchasing Requirements to Prevent Loss of Federal or Other Funds</u>. Waivers of purchasing requirements to prevent the loss of federal or other funds which are subject to recapture shall be handled in accordance with Adm 601.05.

Readopt with amendments Adm 608.01, effective 5-11-05 (Document #8310), as amended effective 7-6-09 (Document #9501), cited and to read as follows:

PART Adm 608 AGENCY REQUIREMENTS FOR PLANT AND PROPERTY MAINTENANCE

Adm 608.01 Repairs to Motor Vehicles.

- (a) Repairs to motor vehicles for amounts equal to or less than the amount established by RSA 21-I:11, IV may be accomplished by the agency without processing through the division.
- (b) A repair to a motor vehicle which exceeds the amount established by RSA 21-I: 11, IV. shall be handled in accordance with the following procedure:
  - (1) The agency shall provide to the division a fully executed requisition form as described in Adm 607.05 and electronically attach thereto, or include as a note or comment thereon, a statement of the work to be performed, including, at least:
    - a. A complete description of the work to be performed;
    - b. A complete description of the parts to be supplied; and
    - c. An estimate of the cost of repairs;
  - (2) If the agency requests the use of a specific vendor, the agency shall file, in addition to the items specified in (b) (1) above, a sole source request under Adm 607.03;
  - (3) If a sole source request under (b) (2) above is approved, the division shall issue a purchase order that shall include instructions to the vendor; and
  - (4) If no sole source request is submitted, the division shall process the request in accordance with Adm 604 through Adm 606.

Adm 608.02 <u>Construction</u>. Prior to requesting a purchase through the division:

- (a) For new construction, alterations to existing structures or repairs to existing structures for work contracted to be in excess of the amount established in RSA 21-I: 82, II or when the alteration or repair involves the structural integrity of a structure, agencies shall utilize the division's bureau of public works design and construction for site preparation work and development of specifications and requirements of a bid.
- (b) For new construction, alterations to existing structures or repairs to existing structures in an amount less than or equal to the amount established in RSA 21-I: 82, II agencies shall utilize their own resources, outside contractor's resources or the division's bureau of public works design and construction for site preparation work and development of specifications and requirements of a bid.

Readopt with amendments Adm 608.03, effective 5-11-05 (Document #8310), to read as follows:

Adm 608.03 <u>Service Contracts</u>. Service contracts for general agency use within the meaning of RSA 21-I: 11, I. (f), such as statewide hazardous waste removal and disposal contracts, and contracts for statewide maintenance and service, such as contracts for elevators, heating systems, air conditioning systems, shall be requisitioned utilizing the form specified in, and according to the procedures set forth in, Adm 607.

Readopt with amendments Adm 609.01, effective 5-11-05 (Document #8310), cited and to read as follows:

PART Adm 609 PRE-ADJUDICATIVE PROCEEDING PROCEDURES IN CASES INVOLVING THE BUREAU OF PURCHASE AND PROPERTY

Adm 609.01 <u>Inquiries Regarding Awards.</u>

(a) Any person or association questioning a notice of award made through the division's bureau of purchase and property under Adm 603 through Adm 606 relative to that person or association shall, within 3 days of the notice of award, contact the purchasing agent handling the matter, by way of a hard copy, facsimile or electronic writing, to request review of criteria used in making the award.

- (b) The person or association and the purchasing agent shall, within 10 days of the notice of award, review the criteria used in making the award.
  - (c) Review under (b) above shall be by means of either:
    - (1) A telephone conversation between the person or association and the purchasing agent; or
    - (2) An in-person meeting between the person or association and the purchasing agent, at the division's office.
- (d) The procedures set forth in this section shall apply only to contracts or purchases which are not submitted to the governor and executive council for approval.

## Readopt with amendments Adm 609.02, effective 5-11-05 (Document #8310), to read as follows:

#### Adm 609.02 Informal Resolution.

- (a) Any person or association who disagrees with an award after having followed the procedure set forth in Adm 609.01 may request informal resolution of the matter according to the following procedures.
- (b) A person or association seeking informal resolution shall within 15 days of the review noted in Adm 609.01 (b) above, contact the administrator of the division's bureau of purchase and property established under RSA 21-I: 12, I, in writing, to request informal resolution.
  - (c) A request under (b) above shall:
    - (1) Briefly describe the nature of the grievance; and
    - (2) Identify the persons, associations and agencies involved.
- (d) Within 15 days of the administrator's receipt of the writing described above, the administrator shall investigate the matter and inform the person or association who initiated the inquiry, in hard copy, facsimile or electronic writing, either that:
  - (1) Corrective action has been taken, describing the nature of the action taken and notifying all persons involved of the corrective action taken;
  - (2) Additional informal telephone communication with the person or association will be scheduled to discuss the problem and attempt to reach a mutually agreeable resolution, together with the time and date that the communication will occur; or
  - (3) A further informal meeting will be scheduled to discuss the problem and attempt to reach a mutually agreeable resolution, together with the date, time and place of the meeting;
- (e) An informal meeting under (d) (3) or an additional informal telephone communication under (d) (2) above, if any, shall be held within 15 days of the administrator's notification.

- (f) The administrator shall issue his or her conclusions in writing, within 10 days of the meeting described in (d) (3) above, or, if corrective action is taken, within 10 days of the telephone communication described in (d) (2) above.
- (g) The procedures discussed above shall be handled in a manner that does not conflict with RSA 21-I: 13-a, II.
- (h) A person who claims to be aggrieved by the informal resolution of a matter may request resolution by way of an adjudicative proceeding under Adm 200 either:
  - (1) If corrective action was taken under (d) (1) above, within 15 days of the notice of the corrective action; or
  - (2) If an informal meeting or an informal telephone communication was held, within 15 days of the notice described in (f) above.
- (i) Any appeal of the decision rendered shall be in accordance with the provisions of RSA 541:3 through 9.
- (j) The procedures set forth in this section shall apply only to contracts or purchases which are not submitted to the governor and executive council for approval.

## Readopt with amendments Adm 610.01, effective 5-11-05 (Document #8310), cited and to read as follows:

#### PART Adm 610 AGENCY LEASES

Adm 610.01 Scope.

- (a) These rules shall apply to all agencies renting or seeking to rent space in a building through the division, to the extent not exempted by RSA 21-I: 18 or other law.
  - (b) These rules shall not apply to:
    - (1) Rental agreements arising by virtue of the department's responsibilities regarding court facilities under RSA 490-B;
    - (2) The rental of land as opposed to space within a building; or
    - (3) The rental of space by an agency, department, branch of government or any other organizational division of the state of New Hampshire to any other agency, department, branch of government or other organizational division of the state of New Hampshire.
- (c) The first phase of the process of obtaining leased space, known as Phase I, is described below at Adm 610.06 through Adm 610.09. The design and development phase, known as Phase II, is described at Adm 610.12.

- (d) Procedures for finalizing rental agreements at no cost or at a cost which is equal to or greater than the governor and council approval threshold, including the form of leases or license agreements in such instances, are described at Adm 610.14 through Adm 610.16.
- (e) Procedures for finalizing rental agreements at a cost less than the governor and council approval threshold, including the form of leases or license agreements in such instances, are described at Adm 610.17 through Adm 610.20.

## Readopt with amendments Adm 610.02 through Adm 610.14, effective 5-11-05 (Document #8310), to read as follows:

## Adm 610.02 <u>Definitions</u>.

- (a) "Architectural barrier-free design committee" means the permanent committee on architectural barrier-free design established by RSA 275-C:11.
- (b) "Bureau" means the bureau of planning and management within the division of plant and property management established under RSA 21-I: 12, II.
- (c) "Clean air" means air quality which meets the standards relative to indoor air quality within space inhabited by a state agency established pursuant to RSA 10-B.
- (d) "Division" means the division of plant and property management within the department of administrative services, established by RSA 21-I: 11.
- (e) "Exclusive rental" means the rental of space in a building by an agency on a full-time basis, with no other entity having the right to occupy the space, other than areas specifically designated as common areas.
- (f) "Extension" means a clause within a rental agreement exercised at the agency's option, allowing an extension of the contract's expiration date to a new, predetermined expiration date, while maintaining the same terms and conditions as specified within the rental agreement.
- (g) "Governor and council approval threshold" means the amount at or above which the governor and executive council specify, pursuant to RSA 4:15, that their approval is necessary in order for an agency to enter into a service contract such as a lease or license agreement, information regarding which is available from the department.
- (h) "Initial rental agreement" means the lease of, or license agreement relating to, space within a building, executed on behalf of an agency when there exists no prior lease or license agreement for the rental of that particular space by the agency.
- (i) "Lease" means a written agreement between a state agency and an individual or association offering the exclusive rental of space within a building.
- (j) "Lessor" means an individual or association that rents space to a state agency under a lease agreement.
- (k) "Letter of interest" means a letter signed by a person authorized to make statements on behalf of an individual or association that is interested in offering particular space for rent to the state, which letter contains the information described at Adm 610.09.

- (1) "License agreement" means a written agreement for the use of the premises of another, for rent, on other than an exclusive basis.
- (m) "Licensor" means an individual or association that rents space to a state agency under a license agreement.
  - (n) "Local newspaper of general circulation" means a newspaper that:
    - (1) Is published at least once a week;
    - (2) Receives wide distribution, with or without subscription, to members of the public in the municipality in which leased space is sought; and
    - (3) Is regularly used by members of the public to advertise rental property in the community in which leased space is sought.
- (o) "Master list of leased property" means the central inventory maintained by the bureau of all physical space used by the state, as described at RSA 21-I: 12 II. (b).
- (p) "Renewal" means a rental agreement negotiated for the same space as was previously occupied by an agency, to go into effect after the expiration of an earlier rental agreement.
- (q) "Rent" means to obtain or offer space within a building that is possessed by an individual or association other than the State of New Hampshire, by means of a written agreement.
  - (r) "Rental agreement" means either a lease or a license agreement.
- (s) "Rental package" means all documents relating to a lease or a license agreement as described in Adm 610.14 (c) and Adm 610.18 whichever is applicable.

#### Adm 610.03 General Requirements.

- (a) Agencies subject to these rules:
  - (1) Shall not begin any procedure for the purpose of renting space, nor take any steps to rent space, without first contacting the bureau;
  - (2) Shall consult with the bureau in developing materials under both phase I and phase II of the leasing process, as described below;
  - (3) Shall seek to enter into a rental agreement only according to the procedures set forth in these rules:
  - (4) Shall not enter into a rental agreement without having first obtained the recommendation of the bureau pursuant to 610.04 below; and
  - (5) Shall not enter into a rental agreement without having first obtained the approvals required under Adm 610.05 below.
- (b) All rental agreements shall be typewritten or printed in computer-generated typescript.
- (c) Unless otherwise authorized by these rules or otherwise allowed by law, an agency wishing to rent space shall seek to procure such space by soliciting letters of interest and competitive proposals for a written rental agreement.

(d) All rental agreement selection processes made by or through the division are subject to cancellation by the state at any time and these rules shall not be construed to impose any obligation on the part of the state to continue a selection process once initiated, or to impose an obligation on the part of the state to enter into a particular contract or purchase.

#### Adm 610.04 <u>Bureau and Division Recommendations</u>.

- (a) Pursuant to RSA 21-I: 12, II (a), the bureau shall provide to the director:
  - (1) For proposed rental agreements at no cost or at a cost equal to or exceeding the governor and council approval threshold over the total duration of the agreement, a synopsis of each proposed lease, and its recommendations relative to approval or rejection of the proposed rental agreement; or
  - (2) For proposed rental agreements for a cost that is less than the governor and council approval threshold over the total duration of the agreement, its recommendations relative to approval or rejection of the proposed rental agreement.
- (b) The director shall, pursuant to RSA 21-I: 12, II (a), provide the bureau's recommendations under (a) above to the commissioner.

#### Adm 610.05 Required Format and Approval of Rental Agreements.

- (a) Proposed rental agreements that an agency wishes to enter into at no cost or at a cost equal to or exceeding the governor and council approval threshold over the duration of the agreement shall, in addition to such other requirements as are imposed by these rules:
  - (1) Require approval of the governor and executive council in accordance with RSA 4:15;
  - (2) Require the approval of the New Hampshire department of justice;
  - (3) If a lease, be submitted to the bureau in the form specified at Adm 610.15; and
  - (4) If a license agreement, be submitted to the bureau in a format containing the information specified at Adm 610.16.
- (b) Proposed rental agreements that an agency wishes to enter into at a cost less than the governor and council approval threshold over the duration of the agreement shall, in addition to such other requirements as are imposed by these rules:
  - (1) Require the approval of the commissioner;
  - (2) If a lease, be in the form specified at Adm 610.19; and
  - (3) If a license agreement, contain the information specified at Adm 610.20.

- (c) The commissioner shall, if a rental process is not cancelled by the state, issue approval under (b) (1) above if he or she concludes that the agreement:
  - (1) Is in conformity with space needs of the state;
  - (2) Meets the requirements of these rules for which no waiver has been given;
  - (3) Is in accordance with the laws relative to the transaction and would not result in a violation of those laws;
  - (4) Is financially beneficial to the state; and
  - (5) Does not circumvent the state budget or budgetary process established by the legislature.

## Adm 610.06 Phase I - Public Notice.

- (a) Except when exercising an option for an extension of an existing rental agreement, as defined at Adm 610.02 (f) above, or when subject to the exemption set forth at Adm 610.11 below, an agency seeking to rent space shall give public notice, at least once, in a local newspaper of general circulation no later than 6 months prior to the date that the agency intends to seek approval under Adm 610.05 above.
  - (b) The public notice shall contain at least the following information:
    - (1) A statement that letters of interest are being sought from parties wishing to be included in the rental agreement design development and proposal process;
    - (2) The name of the agency seeking the rental agreement;
    - (3) The location where the space to be rented is sought;
    - (4) The size of the space required;
    - (5) The duration of rental agreement that is sought;
    - (6) The deadline for submission of letters of interest;
    - (7) The name, physical address and telephone number of the person to contact for additional information and to whom all letters of interest shall be addressed; and
    - (8) The statement that additional information and requirements regarding the requested rental are available from the person identified in (7) above and are available on-line, together with the web address where such information is available.

# Adm 610.07 <u>Phase I – Additional Information to be Made Available by the Agency at the</u> Time of Public Notice.

(a) At the time of the public notice referred to in Adm 610.06 above, the agency seeking to rent space shall promulgate and maintain at its physical address, in addition to the information listed in Adm 610.06 above, the following additional information regarding the space that it is seeking:

- (1) The usable square foot size of the space required;
- (2) Whether or not the proposed lessor or licensor will be required to provide utilities as a part of the rent;
- (3) Whether or not the proposed lessor or licensor will be required to provide custodial services as a part of the rent;
- (4) A statement that the proposed lessor or licensor will be required to comply with RSA 275-C and any rules adopted thereunder by the architectural barrier-free design committee, as it relates to renting space;
- (5) A statement that the proposed lessor or licensor will be required to comply with RSA 10-B "clean indoor air in state buildings," and any rules adopted thereunder which relate to the renting of space;
- (6) In accordance with RSA 21-I: 19-a, an explanation of the energy efficiency measures of RSA 155-A: 13 which the property would be required to meet for renovations, new construction, reconstruction, alteration or maintenance of the property;
- (7) An explanation of the manner in which the proposed lessor or licensor will be required to engage in waste reduction and recycling measures under chapter RSA 9-C;
- (8) A copy of a blank draft rental agreement that it is anticipated a lessor or licensor would be required to execute if selected;
- (9) A specification of any special type of interior space, or functional requirements, desired by the agency;
- (10) A specification of any other special requirements relative to the rental;
- (11) The requirements for provision of parking relating to the rented space;
- (12) Whether or not the agency is willing to share identified facilities, such as rest rooms, with other tenants, or whether, instead such facilities must be provided solely for the use of the agency;
- (13) The deadline for submission of letters of interest;
- (14) A statement that all letters of interest must be in writing;
- (15) A statement specifying the items that must be included in a letter of interest, as further specified in Adm 610.09 below;
- (16) A statement that any design development for renovating, improving, modifying or otherwise changing the proposed premises in order to meet the agency's needs shall be at the landlord's sole expense, and that planning or executing such renovations, improvements, modifications or other changes does not guarantee that a binding rental agreement will be entered into by the state;
- (17) A statement that all letters of interest must be received by no later than the deadline for submission specified in the public notice;

- (18) A statement that information submitted by the proposed lessor or licensor as part of a letter of interest, in connection with any subsequent proposal, or as part of a subsequent lease or license agreement is subject to public disclosure under RSA 91-A;
- (19) A statement that, under RSA 9-F: 1, any lease or license agreement ultimately entered into is subject to posting on a state website;
- (20) A statement that if the proposed lessor or licensor is selected to proceed to Phase II, the proposed lessor or licensor will be required to submit a notarized affidavit as described in Adm 604.07 (d); and
- (21) The name of the person in the agency who may be contacted for further information, together with that person's telephone number and physical address.
- (b) The agency seeking the rental shall provide the information listed in (a) above to the bureau, which shall post this additional information on its web site for the duration of the period specified for the submission of letters of interest.
- (c) The agency shall provide the information noted in (a) above, upon request, to any individual or association responding to a public notice or requesting such information in order to engage in the rental agreement design development and proposal process specified in Adm 610.12 below.

Adm 610.08 <u>Phase I - Responses to Notices.</u> Each individual or association wishing to engage in the rental agreement design development and proposal process specified in Adm 610.12 below shall:

- (a) Prior to the submission of any letter of interest, either:
  - (1) Request from the agency, and review, the information noted in Adm 610.07 (a) above; or
  - (2) Review the information noted in Adm 610.07 (a) above on the bureau's web site.
- (b) Submit a letter of interest in writing to the address specified in the notice, prior to the deadline for submission set forth in the notice; and
- (c) Include in the letter of interest all items specified in the notice and at Adm 610.09 below.

Adm 610.09 <u>Phase I - Content of Letters of Interest</u>. Letters of interest shall contain the following information:

- (a) A statement that the submitting party wishes to offer a particular property for review in response to a specified public notice or other specified request by the state for a letter of interest;
- (b) A statement that the submitting party presently believes that it would, if selected, be willing to accept the terms and conditions of the draft rental agreement noted in Adm 610.07 (a) (8) above;
- (c) The business name, address, telephone number and e-mail address of the entity submitting the letter of interest;

- (d) A statement that the person submitting the letter of interest is legally authorized to do so;
  - (e) The street address of the property offered for consideration;
  - (f) The approximate square footage of the property offered;
- (g) A brief description of the building of which the proposed property is a part, including at least the following:
  - (1) The number of floors;
  - (2) Whether or not all utilities and other services related to the occupancy of the building are currently operable;
  - (3) Whether there is an operable elevator in the building;
  - (4) Whether the space is currently vacant;
  - (5) Whether the space is in good repair;
  - (6) If the space is in need of renovation, improvement, modification or other change prior to being usable for the purposes identified by the agency, a listing of the renovations, improvements, modifications or changes needed;
  - (7) A listing of the current occupants of the building and the location of those users within the building;
  - (8) A description of the parking facilities that would be available to the agency if the space was rented, together with the location of that parking; and
  - (9) Such other information, if any, as may be specified in the agency's public notice or other request for letters of interest;
- (h) An appendix consisting of a map diagram of the area surrounding the location of the proposed property which:
  - (1) Highlights the location of the property;
  - (2) Shows the uses of the property in the area surrounding the proposed property; and
  - (3) Shows the nature of any businesses in the area surrounding the proposed property.

## Adm 610.10 Phase I - Initial Review of Potential Properties Following Public Notice.

- (a) Following the deadline for submissions of letters of interest, an agency shall advise the bureau of the content of all letters of interest received.
- (b) Following the deadline for receipt of letters of interest, the agency shall, if the selection process has not been cancelled by the state, conduct an initial review of proposed properties, consisting of an evaluation of each property to determine whether it meets or exceeds the requirements set forth under Adm 610.06 and Adm 610.07 above.

- (c) In conducting its initial review of proposed properties under (b) above, the agency shall consider factors including the following:
  - (1) The suitability of the property to the agency's specified business needs, including the suitability of the proposed property's physical location to the type of activity that is proposed to take place at the site and the compatibility of activities taking place near the proposed rental property to the activities proposed to take place at the property; and
  - (2) Whether the proposed property either:
    - a. Meets the requirements set forth by the agency in the public notice or other specification of the desired space; or
    - b. Has the potential to meet the requirements set forth by the agency in the public notice or other specification of the desired space if proposed renovations, modifications, improvements or other changes to the property were to take place.
- (d) Following the initial review of proposed properties, the agency shall, if the selection process has not been cancelled by the state, within 30 working days of the deadline for submission of letters of interest, inform those entities submitting letters of interest whether the property submitted for consideration either:
  - (1) Is viable for design development, including the development of contractual specifications for any renovations, improvements, modifications or other changes required and the development of a price for any proposed space; or
  - (2) Does not fulfill the requirements of the public notice or other property specifications, or is incompatible with the agency's business needs, and therefore will not be given further consideration.

#### Adm 610.11 Exemptions and Waivers from Public Notice Requirement.

- (a) The rental of space at no cost or at a cost less than the governor and council approval threshold for the total duration of the agreement shall be exempt from the notice, response and initial selection requirements set forth in Adm 610.06 and Adm 610.08 through Adm 610.10 if:
  - (1) The agency submits to the bureau the information required by Adm 610.07; and
  - (2) The agency provides the bureau with a detailed written description of the reasons why the requested rental is in the best interest of the agency and the state as a whole.
- (b) Notwithstanding (a) above, if an agency so desires, it may elect to utilize the notice, response and initial selection requirements set forth in Adm 610.06 and Adm 610.08 through Adm 610.10 in the case of rentals of space at no cost or at a cost less than the governor and council approval threshold for the total duration of the agreement.
- (c) The commissioner shall, on written request of an agency seeking a rental of space at a cost equal to or greater than the governor and council approval threshold, grant a waiver from the notice, response and initial selection requirements set forth in Adm 610.06 and Adm 610.08 through Adm 610.10 if he or she concludes either that:
  - (1) The immediate procurement of rented space is necessary as the result of:

- a. The partial or complete destruction of other space;
- b. The existence of a health hazard;
- c. Manmade or natural disasters;
- d. Changes in statutory, case law, administrative rules, or the interpretation thereof; or
- e. Other circumstances which render it necessary to procure space more swiftly than would be possible by the utilization of the notice, response and initial selection requirements of these rules; or

### (2) The proposed rental:

- a. Relates to space that is, or will, prior to agency occupancy, be renovated, improved, modified or otherwise changed to be in compliance with handicapped accessibility standards, clean air standards, and applicable safety, fire, and building codes; and
- b. Is in the best interests of the state and can be obtained at a cost that compares favorably to the current price of similar space for rent, or similar space that is currently rented by the state.
- (d) In determining, under (c) (2) b. above, whether a rental is in the best interests of the state and can be obtained at a cost that compares favorably to the current price of similar space, the commissioner's assessment shall include, but not be limited to, an assessment of the possible disruption to public access and programs, the state's incurrence of relocation expenses, and lost productivity.
- (e) A request for a waiver under (c) (2) above shall be rejected if any substantiated complaints relating to the issues described in (c) (2) a. above have been made against the property, or are revealed upon investigation of the proposed property by the bureau, and if the proposed lessor fails to produce evidence that the issues have been, or are scheduled to be, corrected.

#### Adm 610.12 Phase II - Rental Agreement Design Development and Proposal Process.

- (a) Following an agency's initial selection of the property or properties that are potentially suitable for rental, the agency shall, in consultation with the bureau and the proposed landlord's architectural representatives, if the process has not been cancelled by the state, develop architectural drawings, design development plans, parking and site plans and specifications for each property under consideration.
- (b) Architectural drawings, design development plans and specifications under (a) above shall accurately reflect the anticipated scope of work to be conducted on all interior and exterior spaces at each proposed property.
- (c) The individual or association submitting space for consideration shall bear any expense associated with:
  - (1) Unless architectural drawings and specifications have been provided by the bureau on behalf of the agency, the development of any architectural drawings and specifications;

- (2) The creation of design development plans for renovating, improving, modifying or otherwise changing the proposed space in order to meet the needs of the agency;
- (3) The development of any written materials which may be required under Adm 610.07 (a) (6) or (7);
- (4) Any actual renovations, improvements, modifications or changes to such space; and
- (5) Any other costs associated with the design and development process.
- (d) Planning or executing such plans, renovations, improvements, modifications or changes relative to the space shall not guarantee that a binding rental agreement will be entered into by the state.
- (e) If the agency and bureau conclude that architectural drawings and specifications and design development plans for renovating, improving, modifying or otherwise changing the proposed property have been developed which meet the agency's requirements, the agency shall, if the process has not been cancelled by the state, inform each proposed landlord under consideration of the date by which the items specified in (f) below must be provided.
- (f) The proposed landlord or landlords shall, if the process has not been cancelled by the state, submit to the agency a proposal relative to the property that shall, at a minimum:
  - (1) Be submitted prior to the submission deadline established under (e) above;
  - (2) Be in writing, signed by the individual making the proposal or a representative of the association making the proposal who is authorized to make the proposal on behalf of the association;
  - (3) Indicate that the individual or association presently believes that it would be willing, if selected, to provide space that complies with the architectural drawings, design development plans, parking and site plans and specifications developed under this section, according to the terms of the draft rental agreement;
  - (4) Describe the space offered, with reference to any architectural drawings, specifications and design development plans created;
  - (5) State the price of the rental, calculated both by total price over the duration of the proposed agreement and according to a schedule of payments;
  - (6) State that the proposed price shall be held for at least 180 days;
  - (7) State whether any information submitted as part of the proposal is claimed to be exempt from public disclosure pursuant to RSA 91-A; and
  - (8) Pursuant to RSA 21-I: 11-c, include a notarized affidavit, signed under oath, as described in Adm 604.07 (d).

#### Adm 610.13 Agency's Selection of Proposed Property.

(a) Following receipt of proposals under Adm 610.12 above, if the process has not been cancelled by the state, the agency shall, in consultation with the bureau, review all proposals received and determine which of the proposals received meet the criteria under Adm 610.06 and

610.07 above, and of those proposals meeting said criteria, which offers compliance at the lowest cost.

- (b) Pursuant to RSA 21-I: 11-c, I (b), the failure to submit the affidavit prescribed in Adm 610.12 (g), the filing of a false affidavit, or the filing of an affidavit signed by a person who is not authorized to do so on behalf of the proposed landlord or landlords shall result in the automatic rejection of the proposal.
- (c) When conducting its consultation with the bureau under (a) above, the agency shall provide the bureau with copies of the materials it received under Adm 610.12.
- (d) Following the selection of a proposed property by the agency, the agency shall request approval of the rental agreement according to the rules set forth below.

# Adm 610.14 <u>Procedure for Requesting Approval of Rental Agreements at No Cost or with a Total Value Equal to or Greater than the Governor and Council Approval Threshold.</u>

- (a) Following an agency's selection of the proposal that it wishes to accept under Adm 610.13 above, the agency shall, if the process has not been cancelled by the state:
  - (1) Apply for a recommendation from the architectural barrier-free design committee in accordance with RSA 275-C;
  - (2) Apply for approval of clean air standards testing results in accordance with RSA 10-B, or include in the text of the rental agreement conditions stating that:
    - a. Within 30 days of the rental agreement being approved by the governor and executive council, a clean air testing report conducted in compliance with RSA 10-B shall be submitted for approval; and
    - b. Any deficiencies revealed in the report noted in a. above as needing correction shall be remedied in a timely manner;
  - (3) Obtain estimates for the following services, if any, if not provided by the proposed lessor or licensor under the terms of the proposed rental agreement:
    - a. Utilities;
    - b. Custodial services;
    - c. Renovations;
    - d. Modifications; and
    - e. Repairs; and
    - f. Recycling; and
  - (4) Confer with the New Hampshire department of justice if any amendments or modifications to the standard language of the proposed rental agreement have been proposed.

- (b) At least 2 weeks before requesting that the governor and executive council approve the proposed lease or license agreement the agency shall, if the process has not been cancelled by the state, submit to the bureau:
  - (1) The original completed rental agreement specified under Adm 610.15 or Adm 610.16 bearing the signatures of the agency and the proposed lessor or licensor, together with all attachments required by the rental agreement and the signature of the representative of the New Hampshire department of justice indicating approval of the agreement pursuant to Adm 610.15 (g) or Adm 610.16 (g);
  - (2) All other materials, including copies and cover letter, that the agency intends to submit to the governor and executive council and
  - (3) Plans and specifications, including:
    - a. Accurate floor plans of the rental space which are:
      - 1. Measured to scale; and
      - 2. Signed and dated by the proposed lessor or licensor and the agency, indicating that the plans are mutually accepted;
    - b. If designated parking spaces are included in the agreement, an accurate site plan which:
      - 1. Depicts the parking spaces and their location relative to the building and site to which they are associated; and
      - 2. Is signed and dated by the proposed lessor or licensor and the agency, indicating that the plan is mutually accepted;
    - c. If improvements, new construction or renovations are to be made, accurate floor plans and detailed specifications which:
      - 1. Identify the work that is to be undertaken and the means, methods and materials of undertaking that work; and
      - 2. Are signed and dated by the proposed lessor or licensor and the agency, indicating that the plans are mutually accepted.
- (c) For the purposes of this section, the floor plans described in (b) (3) a. above shall include, at least:
  - (1) The square footage measurements of all portions of the rented space;
  - (2) Assigned room names or numbers;
  - (3) Any proposed furniture lay-out which is included as part of the rental;
  - (4) The lay-out of any rest rooms, including the location of fixtures;

- (5) The path of travel from the entrances to the building to the entrance of the rented space; and
- (6) In addition to the depiction of the spaces intended for an agency's exclusive use, a depiction of any space which is to be shared or used in common with other building occupants;
- (d) The submission to the bureau of the materials under (b) and (c) above shall constitute a request by the agency for the bureau's recommendation as to the proposed lease or license agreement.

## Repeal Adm 610.15, effective 5-11-05 (Document #8310), as follows:

Adm 610.15 Rental Package for Rental Agreements at No Cost or with a Total Value of Over \$5,000. The completed rental package for rental agreements at no cost or with a total value of over \$5,000 shall contain the following materials:

- (a) A cover letter to governor and executive council requesting approval of the rental agreement in accordance with RSA 4:15, including at least the following:
  - (1) The name and address of the proposed lessor or licensor;
  - (2) The name and address of the agency;
  - (3) The purpose of the proposed lease or license agreement;
  - (4) The effective dates of the proposed lease or license agreement;
  - (5) Whether the proposed rental agreement is an initial, renewed, extended, or amended lease or license agreement;
  - (6) Whether any option to extend is included in the terms of the proposed rental agreement;
  - (7) The appropriation and object codes for the transaction;
  - (8) The proposed lessor's or licensor's vendor code number;
  - (9) The total dollar amount of the proposed lease or license agreement;
  - (10) The specifics of any request for a waiver by the governor and executive council of any requirements that would normally relate to the rental agreement;
  - (11) Whether or not the proposed rental agreement is retroactive;
  - (12) Whether or not the proposed rental agreement is being provided by a sole source provider;
  - (13) A detailed explanation of the circumstances of the rental agreement, with attachments, including, at least:

- a. Copies of the public notice advertisements, if any, and the dates that they were published;
- b. The names and addresses of all properties investigated;
- c. Descriptions of the rental terms proposed by all respondents, if any;
- d. The reason why the agency chose the proposed lessor or licensor named in the rental agreement;
- e. A description of the space to be rented;
- f. The best estimate of the cost of services and items not included in the rental agreement, including but not limited to the following:
  - 1. Utilities, including estimates for the annual average costs of heat, electricity, water and sewer;
  - 2. Estimated annual costs of maintenance, custodial services, and snow removal:
  - 3. Projected costs of any repairs, improvements, modifications, renovations or other changes to be made to the rented space; and
  - 4. Any other costs which shall be itemized, including the cost of recycling;
- (14) Specifications regarding the agency to occupy the rented space, including:
  - a. The agency name and titles of any subsection; and
  - b. The number of staff positions to occupy the rented location;
- (15) If the rental agreement is retroactive, a detailed description of why;
- (16) If the rental agreement is being provided by a sole source provider, a description of why the solicitation of additional proposals was not undertaken;
- (17) If an apparently lower priced proposal was not chosen, a detailed justification of why the particular proposal was selected;
- (18) If the selected location is not in compliance with policies developed by the office of state planning under RSA 9-B, a detailed justification of why compliance with RSA 9-B was not possible; and
- (19) The name and signature of the person submitting the request; and
- (b) One original and 11 photocopies of the completed rental agreement, bearing the signatures of the agency and proposed lessor, together with all attachments required by the rental agreement and the signature of the representative of the department of justice indicating approval of the agreement pursuant to Adm 610.16 (g) or Adm 610.17 (g).

## Readopt with amendments and renumber Adm 610.16, effective 5-11-05 (Document #8310), as Adm 610.15 to read as follows:

Adm 610.15 Form of Leases at No Cost or with a Total Value Equal to or Greater than the Governor and Council Approval Threshold.

- (a) In regard to leases at no cost or with a total value equal to or greater than the governor and council approval threshold for the duration of the agreement, the proposed lessor selected and the agency shall, if the process has not been cancelled by the state, execute a standard lease agreement available from the bureau as set forth below.
- (b) Unless modified, amended or otherwise altered with the approval of the New Hampshire department of justice, an agency shall provide at least the following on a standard lease agreement form available from the bureau:
  - (1) The date of the lease;
  - (2) The full name of the proposed lessor;
  - (3) If applicable, the state where the proposed lessor is incorporated;
  - (4) The street address of the proposed lessor's principal place of business, including street number, street, city, state and zip code;
  - (5) The proposed lessor's telephone number;
  - (6) The name of the department entering into the lease;
  - (7) The full address of the tenant's primary business office;
  - (8) The tenant's telephone number;
  - (9) The location of the space to be leased, including the street number, street, city, state and zip code;
  - (10) A description of the specific area of space to be leased, including square foot measurements and a description of the space's location in the building;
  - (11) The effective dates of the lease;
  - (12) The duration of the lease and the dates that occupancy and rental payments will begin and end;
  - (13) A description of any extensions of term;
  - (14) The annual and monthly rental amount, including any annual escalation in rent anticipated during the term;
  - (15) The date when the first month's rent is due;

- (16) Whether or not provisions have been made for the payment of additional rent in certain defined circumstances:
- (17) Whether or not the proposed lessor will provide utilities included in the annual rent and, if not, the utilities not included;
- (18) Provisions defining the lessor's maintenance responsibilities in regard to the premises;
- (19) The purpose for which the premises shall be used;
- (20) General terms and conditions including:
  - a. A provision regarding indemnification;
  - b. A provision indicating that no provision in the lease is intended to be, nor shall it be, interpreted by either party to be a waiver of sovereign immunity;
  - c. A provision indicating that the lease will be interpreted according to the laws of New Hampshire;
  - d. A provision indicating that the lease embodies the entire agreement between the parties and supersedes all prior agreements relating to the subject matter of the lease; and
  - e. A provision indicating that the agreement may only be modified or amended by mutual agreement, in a writing signed by the parties, and that no amendment will become effective without the approval of the governor and executive council;
- (21) Whether or not the proposed lessor will provide janitorial services included in the annual rent and if so, a schedule describing the services that will be provided;
- (22) Whether or not certain improvements are to be made to the space either prior to or after tenant occupancy and if so, a statement of which party will be responsible for undertaking those improvements;
- (23) The name of the agency entering the lease;
- (24) The full name and title of the person authorizing the lease on behalf of the agency;
- (25) The full name of the individual or association who will be entering the lease as a lessor; and
- (26) The name and title of the person authorizing the lease on behalf of the proposed lessor.
- (c) The standard lease agreement form available from the bureau shall contain a provision indicating that the lease and the commencement of its term, and any extensions thereof, is conditioned upon its approval by the governor and executive council.
- (d) The terms and conditions of a standard lease agreement form available from the bureau shall not be modified or amended without first obtaining the recommendation and approval of the New Hampshire department of justice.

- (e) Unless modified, amended or otherwise altered with the approval of the New Hampshire department of justice, each standard lease agreement form submitted by an agency for approval shall have attached thereto each of the following exhibits or attachments:
  - (1) A schedule of annual and monthly payments due during the initial term and during any extended term of the lease;
  - (2) If janitorial services are to be provided by the proposed lessor, a description of those services and how they shall be performed;
  - (3) A description of the provisions that are either in place or are contractually agreed to be performed in the future in order to assure architecturally barrier-free access leading into and extending throughout the lease space, in accordance with RSA 275-C and the federal Americans with Disabilities Act:
  - (4) Proof, in the form of a letter signed by the committee on architectural barrier-free design established pursuant to RSA 275-C, that the agency has received an opinion from that committee regarding whether the leased space meets barrier-free requirements;
  - (5) A description of the provisions made for testing for, and complying with, clean air quality standards for state buildings in accordance with RSA 10-B, or a certificate of compliance with clean air quality standards;
  - (6) A statement regarding the manner in which any waste materials for which markets are readily available will be recycled in accordance with RSA 9-C: 3;
  - (7) If any modifications, amendments or other alterations have been made to the standard lease agreement form, the text of those changes;
  - (8) A current certificate of insurance from the proposed lessor, indicating that the proposed premises are insured in the amounts specified in the proposed lease or addenda thereto;
  - (9) If not provided by the proposed lessor under the terms of the proposed rental agreement, estimates for the following services:
    - a. Utilities;
    - b. Custodial services;
    - c. Renovations;
    - d. Modifications;
    - e. Repairs; and
    - f. Recycling;
  - (10) If the proposed lessor is a New Hampshire corporation, partnership or other form of business association, a current certificate of good standing, certificate of existence or other documentation from the New Hampshire secretary of state

indicating that the proposed lessor is duly constituted and in good standing in the state of New Hampshire;

- (11) If the proposed lessor is a corporation, partnership or other form of business association not formed in New Hampshire, documentation from the New Hampshire secretary of state that the proposed lessor is registered to do business in New Hampshire; and
- (12) If the proposed lessor is not an individual, a fully executed certificate of authority, in such format as is specified following consultation with the New Hampshire department of justice, indicating that the corporation or other entity has resolved to enter the agreement and that corporate officers or other representatives of the entity are authorized to act in regard thereto.
- (f) The proposed parties to the lease shall provide authorized and notarized signatures in the spaces provided on the standard lease agreement form, but such lease shall not be effective unless and until approved by the New Hampshire department of justice and the governor and executive council.
- (g) The standard lease agreement form shall contain spaces in which an authorized representative of the New Hampshire department of justice shall, if he or she approves of the agreement, provide his or her signature and the date thereof.
- (h) The standard lease agreement form shall contain spaces in which the approval of the governor and executive council, if any, shall be noted by the office of the secretary of state, together with the date of such approval.
- (i) The clauses of the standard lease agreement form shall incorporate any attached exhibits by reference.

## Readopt with amendments and renumber Adm 610.17, effective 5-11-05 (Document #8310), as Adm 610.16 to read as follows:

Adm 610.16 <u>Content of License Agreements at No Cost or with a Total Value Equal to or Greater than the Governor and Council Approval Threshold.</u>

- (a) In regard to license agreements at no cost or with a total value equal to or greater than the governor and council approval threshold for the duration of the agreement, the proposed licensor selected and the agency shall, if the process has not been cancelled by the state, and unless modified, amended or otherwise altered with the approval of the New Hampshire department of justice, execute a licensing rental agreement containing the information set forth below.
  - (b) The license agreement shall contain at least the following:
    - (1) The name and address of the proposed licensor and the agency renting space;

- (2) A description of the space to be rented, including the street address, location within the building, and square footage of the space being rented;
- (3) The specific hours, days or times of occupancy by the agency;
- (4) A description of the business purpose of the agreement;
- (5) If the agreement includes the right to use services existing at the premises, such as telephones, photocopiers or internet services, a description of the services and the terms under which they are offered, including price;
- (6) The commencement and expiration dates of the agreement;
- (7) A provision indicating that the agreement and the commencement of its term, and any extensions thereof, is conditioned upon its approval by the governor and executive council;
- (8) The fee for the use of the premises, calculated both according to any periodic payments and by total cost over the duration of the agreement;
- (9) A provision regarding the insurance that the proposed licensor shall maintain;
- (10) General terms and conditions including:
  - a. A provision regarding indemnification;
  - b. A provision indicating that no provision in the license is intended to be, nor shall it be, interpreted by either party to be a waiver of sovereign immunity;
  - c. A provision indicating that the license will be interpreted according to the laws of New Hampshire;
  - d. A provision indicating that the license embodies the entire agreement between the parties and supersedes all prior agreements relating to the subject matter of the license; and
  - e. A provision indicating that the agreement may only be modified or amended by mutual agreement, in a writing signed by the parties, and that no amendment will become effective without the approval of the governor and executive council;
- (11) The name of the agency entering the license;
- (12) The full name and title of the person authorizing the license on behalf of the agency;
- (13) The full name of the individual or association that will be entering the license as a licensor; and
- (14) The name and title of the person authorizing the license on behalf of the proposed licensor.
- (c) Sample license agreements shall be made available to an agency by the bureau.

- (d) The terms of a license agreement described in (b) above shall be contained in any license agreement submitted for approval by the agency unless a modification or amendment thereof has been approved by the New Hampshire department of justice.
- (e) Unless modified, amended or otherwise altered following consultation with the New Hampshire department of justice, the license agreement shall have attached thereto the following:
  - (1) If janitorial services are to be provided by the proposed licensor, a description of those services and how they shall be performed;
  - (2) A description of the provisions that are either in place or are contractually agreed to be performed in the future in order to assure architecturally barrier-free access leading into and extending throughout the licensed space, in accordance with RSA 275-C and the federal Americans with Disabilities Act;
  - (3) Proof, in the form of a letter signed by a representative of the committee on architectural barrier-free design established pursuant to RSA 275-C, that the agency has received an opinion from that committee regarding whether the licensed space meets barrier-free requirements;
  - (4) A current certificate of insurance, indicating the existence of insurance in an amount specified in the license agreement;
  - (5) If the proposed licensor is a New Hampshire corporation, partnership or other form of business association, a current certificate of good standing, certificate of existence or other documentation from the New Hampshire secretary of state indicating that the proposed licensor is duly constituted and in good standing in the state of New Hampshire;
  - (6) If the proposed licensor is a corporation, partnership or other form of business association not formed in New Hampshire, documentation from the New Hampshire secretary of state that the proposed licensor is registered to do business in New Hampshire;
  - (7) If the proposed licensor is not an individual, a fully executed certificate of authority, in such format as specified following consultation with the New Hampshire department of justice, indicating that the corporation or other entity has resolved to enter the agreement and that corporate officers or other representatives of the entity are authorized to act in regard thereto;
  - (8) A description of the licensed space, including its square footage and location within the building to be used by the agency; and
  - (9) If the annual rent is not a fixed amount throughout the duration of the term, a schedule of annual and monthly payments due during the initial term and during any extended term of the license, referencing any and all provisions of the license that define the annual rent.
- (f) The parties to the license agreement shall provide their authorized and notarized signatures on the license agreement, but such license agreement shall not be effective unless and until approved by the New Hampshire department of justice and the governor and executive council.

- (g) A standard license agreement shall contain spaces in which an authorized representative of the New Hampshire department of justice shall, if he or she approves of the agreement, provide his or her signature and the date thereof.
- (h) A license agreement shall contain spaces in which the approval of the governor and executive council, if any, shall be noted by the office of the secretary of state, together with the date of such approval.
- (i) A license agreement shall contain, as an attachment, a cover letter submitted or to be submitted by the agency to the governor and executive council, requesting authority to enter into the license agreement.
  - (j) The clauses of a license agreement shall incorporate any attached exhibits by reference.

## Readopt with amendments and renumber Adm 610.18, effective 5-11-05 (Document #8310), as Adm 610.17 to read as follows:

Adm 610.17 <u>Procedure for Requesting Approval of Rental Agreements at a Cost Less than the Governor and Council Approval Threshold.</u> Following an agency's selection of a property that it wishes to rent at a cost less than the governor and council approval threshold, the agency shall, if the process has not been cancelled by the state:

- (a) If not provided by the proposed lessor or licensor under the terms of the proposed rental agreement, obtain estimates for the following services:
  - (1) Utilities;
  - (2) Custodial services;
  - (3) Renovations;
  - (4) Modifications;
  - (5) Repairs; and
  - (6) Recycling.
- (b) In the case of a lease agreement, submit to the bureau the rental package described at Adm 610.18 below, including:
  - (1) The completed and fully signed rental agreement described at Adm 610.19 bearing the signatures of the agency and the proposed lessor;
  - (2) All attachments required by the agreement; and

- (3) If any modifications, amendments or other alterations have been made to the lease agreement form, the signature of a representative of the New Hampshire department of justice indicating approval of the change;
- (c) In the case of a license agreement, submit to the bureau the rental package described at Adm 610.18 below, including:
  - (1) The completed and fully signed rental agreement described at Adm 610.20 bearing the signatures of the agency and the proposed lessor;
  - (2) All attachments required by the agreement;
  - (3) If any modifications, amendments or other alterations have been made to the content required under Adm 610.20, the signature of a representative of the New Hampshire department of justice indicating approval of the changes; and
  - (4) Plans and specifications as noted in Adm 610.14 (b) (3), a., b., and c.
- (d) If any amendments or modifications to the language of a lease agreement form as set forth at Adm 610.19 or the contents of a license agreement as set forth at Adm 610.20 are desired to be made in the rental agreement, confer with the New Hampshire department of justice regarding the modifications or amendments.

## Readopt with amendments and renumber Adm 610.19, effective 5-11-05 (Document #8310), as Adm 610.18 to read as follows:

Adm 610.18 <u>Rental Package for Rental Agreements at a Cost Less than the Governor and Council Approval Threshold.</u> The completed rental package for rental agreements at a cost less than the governor and council approval threshold shall contain:

- (a) A cover letter requesting the bureau's recommendation on the rental agreement, and containing the following information:
  - (1) The reason why the agency chose the proposed lessor or licensor named on the rental agreement;
  - (2) The best estimate of the cost of services and items that might result in a cost to the agency that is not included in the rental agreement, including but not limited to the following:
    - a. Utilities, including estimates for the annual average costs of heat, electricity, and water;
    - b. Estimated annual costs of maintenance, custodial, snow removal and cleaning services;
    - c. Projected costs of any repairs, improvements, renovations, modifications or other changes to be made to the rented space; and

- d. Any other costs, including the cost of recycling, which costs shall be itemized; and
- (3) Specifications regarding the agency that is to occupy the rented space, which specifications shall include:
  - a. The agency name and names of subsections;
  - b. The number of staff positions that are to occupy the rented location; and
  - c. The total square footage of the space to be rented;
- (b) If the rental agreement is a proposed lease, the original and one copy of the completed and fully signed rental agreement, in the form set forth in Adm 610.19, together with all attachments;
- (c) If the rental agreement is a proposed license agreement, the original and one copy of the completed and fully signed rental agreement containing the information noted at Adm 610.20.

## Readopt with amendments and renumber Adm 610.20, effective 5-11-05 (Document #8310), as Adm 610.19 to read as follows:

Adm 610.19 <u>Form of Leases at a Cost of Less than the Governor and Council Approval Threshold.</u>

- (a) In regard to leases at a cost less than the governor and council approval threshold over the duration of the agreement, the proposed lessor and the agency shall, if the process has not been cancelled by the state, execute a standard lease agreement form available from the bureau.
- (b) Unless modified, amended or otherwise altered with the approval of the New Hampshire department of justice, an agency shall provide, on the standard lease agreement form available from the bureau, at least the information set forth at Adm 610.15 (b) above.
- (c) The standard lease agreement form available from the bureau shall contain a provision indicating that the lease and the commencement of its term, and any extensions thereof, is conditioned upon its approval by the commissioner.
- (d) The terms and conditions of a standard lease agreement form available from the bureau shall not be modified or amended except upon approval of the New Hampshire department of justice.
- (e) Unless modified, amended or otherwise altered following consultation with the New Hampshire department of justice, in order to address the specific circumstances of the particular agreement, each standard lease agreement form submitted for approval shall have attached thereto each of the following exhibits or attachments:
  - (1) If any modifications or amendments to the standard rental agreement have been made, the text of those changes;

- (2) A current certificate of insurance from the proposed lessor indicating that the proposed premises are insured in the amounts specified in the proposed lease or in attachments or addenda thereto;
- (3) If the proposed lessor is a New Hampshire corporation, partnership or other form of business association, a current certificate of good standing, certificate of existence or other documentation from the New Hampshire secretary of state indicating that the proposed lessor is duly constituted and in good standing in the state of New Hampshire;
- (4) If the proposed lessor is a corporation, partnership or other form of business association not formed in New Hampshire, documentation from the New Hampshire secretary of state that the proposed lessor is registered to do business in New Hampshire;
- (5) If not provided by the proposed lessor under the terms of the proposed rental agreement, estimates for the following services:
  - a. Utilities;
  - b. Custodial services;
  - c. Renovations:
  - d. Modifications;
  - e. Repairs; and
  - f. Recycling.
- (6) A printed copy of an accurate floor plan of the leased space, measurable to scale, which shall include an illustration of the space that is to be for the agency's sole use, and any space to be shared with other building occupants;
- (7) If provision of designated parking spaces is included in the lease, an accurate plan depicting the parking spaces and their relation to the building and site;
- (8) A schedule of annual and monthly payments due during the initial term and during any extended term of the lease;
- (9) If janitorial services are to be provided by the proposed lessor, a description of those services and how they shall be performed;
- (10) A description of the provisions that are either in place or are contractually agreed to be performed in the future in order to assure architecturally barrier-free access leading into and extending throughout the lease space, in accordance with RSA 275-C and the federal Americans with Disabilities Act;
- (11) A description of the provisions made for testing for, and complying with, clean air quality standards for state buildings in accordance with RSA 10-B, or a certificate of compliance with clean air quality standards;
- (12) A detailed description of any improvements, renovations, modifications, new construction or other changes to be made at the premises, containing accurate,

measurable floor plans depicting all proposed demolition and or new construction, and the specifications for all new construction and materials;

- (13) A statement regarding the manner in which any waste materials for which markets are readily available will be recycled, in accordance with RSA 9-C:3; and
- (14) If the proposed lessor is not an individual, a fully executed certificate of authority, in such format as is specified by the division following consultation with the New Hampshire department of justice, indicating that the corporation or other entity has resolved to enter the agreement and that corporate officers or other representatives of the entity are authorized to act in regard thereto.
- (f) The proposed parties to the lease shall provide authorized and notarized signatures in the spaces provided on the standard lease agreement form, but such lease shall not be effective unless and until approved by the commissioner according to the standards set forth at Adm 610.05 (c).
- (g) Any recommendation issued by the New Hampshire department of justice for any modifications or amendments of the standard lease agreement form may be noted by the New Hampshire department of justice either on the proposed lease agreement form or in an attachment thereto.
- (h) The standard lease agreement form shall contain a space in which the approval of the commissioner, if any, shall be noted, together with the date of such approval.

## Readopt with amendments and renumber Adm 610.21, effective 5-11-05 (Document #8310), as Adm 610.20 to read as follows:

Adm 610.20 <u>Content of License Agreements for a Cost Less than the Governor and Council Approval Threshold.</u>

- (a) In regard to license agreements at a cost of less than the governor and council approval threshold over the duration of the agreement, the proposed licensor and the agency shall, if the process has not been cancelled by the state, and unless modified, amended or otherwise altered with the approval of the New Hampshire department of justice, execute a licensing rental agreement containing at least that material specified at Adm 610.16 (b) above, except that:
  - (1) The provision noted in Adm 610.16 (b) (7) regarding approval shall indicate that the agreement and the commencement of the term of the agreement, and any extensions thereof, is conditioned upon its approval by the commissioner; and
  - (2) The provision noted in Adm 610.16 (b) (10) e., requiring a provision on modification and amendment, shall not require approval of the governor and executive council but shall instead require approval by the comissioner.
  - (b) Sample license agreements shall be available to an agency from the bureau.

- (c) The terms of a license agreement described in (b) above shall be contained in any license agreement submitted for approval by the agency unless a modification or amendment thereof has been made following consultation with and recommendation by the New Hampshire department of justice.
- (d) Each license agreement at a cost less than the governor and council approval threshold submitted by an agency for approval shall have attached thereto, unless modified, amended or otherwise altered following consultation with the New Hampshire department of justice, the material noted at Adm 610.19 (e).
- (e) The parties to the license agreement shall provide their authorized and notarized signatures on the license agreement, but such license agreement shall not be effective unless and until approved by the commissioner according to the standards set forth at Adm 610.05 (c).
- (f) Any approval or recommendation issued by the New Hampshire department of justice for modifications or amendments of the content of the proposed license agreement shall either be attached as an exhibit to the proposed license agreement submitted by the agency, or noted by the New Hampshire department of justice on the proposed license agreement itself.
- (g) The clauses of the proposed license agreement shall incorporate any attached exhibits by reference.

## Readopt with amendments and renumber Adm 610.22, effective 5-11-05 (Document #8310), as amended effective 7-6-09 (Document #9501), as Adm 610.21 to read as follows:

### Adm 610.21 Vendor Code Number Requirements for Lessors and Licensors.

- (a) A lessor or licensor that does not possess a vendor code number shall, before submission for approval of a rental agreement by the governor and council or by the commissioner, submit to the division the fully executed items described in Adm 603.02 and Adm 603.03.
- (b) Following submission of the items noted in (a) above, the lessor or licensor shall be assigned a vendor code number.
- (c) The provisions of Adm 603.04 relating to the vendor code number list shall apply to lessors and licensors holding vendor code numbers.

## Readopt with amendments and renumber Adm 610.23, effective 5-11-05 (Document #8310), as Adm 610.22 to read as follows:

Adm 610.22 Agency Reporting of Leases and Licenses for Use of Premises.

- (a) In accordance with RSA 21-I:11, VII. (b) and the bureau's responsibilities under RSA 21-I: 12, each agency renting space shall report the status of any rental agreement to the bureau in writing at least once each year.
  - (b) The report on the status of each rental agreement under (a) above shall:
    - (1) Be in the form of a letter to the bureau signed by an authorized representative of the agency; and
    - (2) Shall include at least the following information:
      - a. Whether or not the premises have been vacated or are still occupied;
      - b. Whether or not rent is currently being paid;
      - c. The annual cost of all utilities and other costs of occupancy that are not included in the annual rent;
      - d. Whether or not the information contained on the bureau's master list of leased property is correct as of the date of the report; and
      - e. If the information contained on the bureau's master list of leased property is not correct as of the date of the report, the items that are incorrect, together with the correct information.
  - (c) Reports under (a) above shall be submitted no later than May 1 of each year.

## Readopt with amendments and renumber Adm 610.24, effective 5-11-05 (Document #8310), as Adm 610.23 to read as follows:

Adm 610.23 Duration of Rental Agreements.

- (a) Except as allowed under (b) below, no rental agreement shall be for a duration of more than 5 years, including any option or options to extend.
- (b) In accordance with RSA 4:39-b, any rental agreement which exceeds the 5-year maximum duration set forth in (a) above shall be submitted to the long range capital planning and utilization committee described at RSA 17-M for approval.
- (c) Any request under (b) above shall be reviewed and approved by the long range capital planning and utilization committee prior to submission of the rental agreement to the governor and executive council, or to the commissioner, for approval.

(d) If an agency wishes to extend the duration of a rental agreement, and if such agreement originally required governor and executive council approval, any extension shall itself require separate governor and executive council approval, whether or not reference to the possibility of an extension was cited in the original rental agreement.

## Readopt and renumber Adm 610.25, effective 5-11-05 (Document #8310), as Adm 610.24 to read as follows:

#### Adm 610.24 Waiver Procedure.

- (a) A waiver from the provisions of these rules shall be granted by the commissioner if requested by an agency and the commissioner concludes that:
  - (1) The waiver is allowed by law;
  - (2) The agency is required by law or by instruction of the governor and executive council to meet a deadline to obtain leased space sooner than the time periods established by these rules; and
  - (3) The waiver is the result of circumstances beyond the agency's control.
- (b) An agency requesting a waiver under (a) above shall do so in a writing that contains a detailed description of why the waiver is necessary, including an explanation of how the request for a waiver comports with the standards set forth in (a) above;
- (c) The commissioner shall waive the provisions of these rules, regardless of whether an agency has so requested, if the commissioner concludes either that:
  - (1) Waiver is required under the standards set forth at (a) above;
  - (2) The purpose of the rule sought to be waived would be achieved even if waiver were given and the waiver is necessary to advance the purposes of RSA 21-I;
  - (3) The waiver is required by law; or
  - (4) Waiver is warranted under Adm 601.07 (b).
- (d) A waiver granted under this section shall not be permanent in nature and shall only apply to the particular circumstances giving rise to the issuance of the waiver.

### Readopt with amendments and renumber Adm 610.26, effective 5-11-05 (Document #8310), as Adm 610.25 to read as follows:

#### Adm 610.25 Cancellation of Selection Process.

- (a) The division or commissioner shall at any time in the process cancel any rental agreement selection process, design development and proposal process, or selection process when the division or commissioner concludes that the continuation of the particular process or rental is not in the best interests of the state of New Hampshire.
- (b) For the purposes of (a) above, the division or commissioner shall cancel, decline to enter into any agreement, or decline to recommend entry into any agreement, if the division or commissioner concludes either that:
  - Such action is warranted so as to avoid the potential that space of an unacceptable quality, price, type, or other term of agreement will be provided to the state;
  - (2) Such action is warranted under the terms of the particular rental selection process;
  - (3) Such action is warranted so as to enable an agency to fulfill its mission, or for the state to maximize the effective use of funds or other resources;
  - (4) Such action is required in view of funding constraints;
  - (5) Such action would be likely to enable the state to address its needs in a more timely, efficient or cost-effective manner than would continuation of the process;
  - (6) Such action is warranted so as to comply with statutory law, case law, or these rules, or to advance the purposes of RSA 21-I or these rules; or
  - (7) Such action is otherwise warranted to foster the integrity of the process.
- (c) Cancellation under the foregoing paragraphs shall not preclude the initiation of a new process for the selection of rented space in regard to the matter cancelled.

### Adopt new Adm 610.26 to read as follows:

#### Adm 610.26 Debarment.

- (a) Pursuant to 21-I:11-c, no individual or business entity shall make a bid, proposal or quotation in response to a request for bid, proposal, or quotation issued by the division if that individual or entity, or any of its subsidiaries, affiliates or principal officers are subject to the prohibitions, limitations or conditions listed in RSA 21-I: 11-c, I. (a).
- (b) All prospective lessors and licensors shall, as part of their proposal under Adm 610.12, provide an affidavit as described in Adm 604.07 (d).

- (c) Pursuant to RSA 21-I: 11-c, I (b), failure to submit the affidavit noted in (b) above, the filing of a false affidavit or the signing of an affidavit by an unauthorized person shall result in the automatic rejection of the proposal.
- (d) Individuals or entities which are identified on the list described in RSA 21-I: 11-c, II shall be debarred from submitting proposals.
- (e) Inclusion on the debarred parties list shall be accomplished in accordance with the processes set forth in RSA 21-I: 11-c.

## Readopt with amendments Adm 611.01, effective 5-11-05 (Document #8310), cited and to reads as follows:

#### PART Adm 611 STATE SURPLUS MANAGEMENT

### Adm 611.01 <u>Definitions.</u>

- (a) "Agency" means "agency" as defined in RSA 21-I: 11, I. (b), to the extent not exempt or excluded from utilization of the state surplus management system by RSA 21-I: 18 or other law.
- (b) "Closing date" means a date prior to the date of an auction or other competitive bidding process after which no public sale of property that is to be offered in the auction or other competitive bidding process is be made except by means of the auction or competitive bidding process itself.
- (c) "Degauss" means to demagnetize a magnetic data storage device in such a manner so as to remove all data stored on the device.
- (d) "Disposal" means the disposition of state property through state surplus management pursuant to RSA 21-I: 12 I., (d) by a means other than redistribution.
- (e) "Form TDMV 19A" means a form entitled "verification of vehicle identification form" produced by and available from the state of New Hampshire department of safety, division of motor vehicles, bureau of title and anti-theft, commonly known as form TDMV 19A.
- (f) "Form TDMV 22A" means a form entitled "report of sale or transfer of a non-titled motor vehicle form" produced by and available from the state of New Hampshire department of safety, division of motor vehicles, bureau of title and anti-theft, commonly known as form TDMV 22A.
- (g) "Redistribution" means the process of redistributing state property through state surplus management pursuant to RSA 21-I: 12 I., (d), as described in Adm 611.11 below.
- (h) "State surplus management" means the system and process by which property under RSA 21-I: 12, I., (d) is redistributed or disposed of, including, but not limited to, the redistribution or disposal of:

#### (1) Heavy equipment;

- (2) Motor vehicles:
- (3) Trucks;
- (4) Plows:
- (5) Equipment;
- (6) Furniture; and
- (7) Furnishings.

Readopt with amendments and renumber Adm 611.02, effective 5-11-05 (Document #8310), so that Adm 611.02 becomes Adm 611.02, Adm 611.03, Adm 611.04, Adm 611.05 and Adm 611.06, to read as follows:

### Adm 611.02 Acceptance and Valuation of Items By State Surplus Management.

- (a) State surplus management shall, upon submission of a declaration of surplus form described in Adm 611.07, accept, either for redistribution or for disposal, such property as is submitted to it by entities that are part of New Hampshire state government, unless it is determined that the item:
  - (1) Has no net value under (c) below;
  - (2) May not be either redistributed or disposed of without violating legal restrictions; or
  - (3) Was obtained by the state as the result of a forfeiture or seizure.
- (b) Provided that there are no legal restrictions upon disposal of the property, state surplus management shall, upon submission of a declaration of surplus form described in Adm 611.07, accept for disposal, but not for redistribution, property submitted to it by entities that are part of New Hampshire state government which property was obtained by the state as the result of a forfeiture or seizure.
- (c) In determining whether an item offered for redistribution or disposal under (a) above has any net value, state surplus management shall consider both the likely price for which the item would sell and factors bearing on the cost of accepting or disposing of the item, such as the likely cost of:
  - (1) The disposal of hazardous waste, if any, connected with the item;

- (2) Whether transportation or cleaning of the property is required and, if so, the cost thereof;
- (3) The potential cost of repair;
- (4) Any costs or handling fees which may be associated with the acceptance, redistribution, or disposal of the item; and
- (5) Any storage fees which may be incurred in connection with the item.

### Adm 611.03 <u>Property Delivered to State Surplus Management.</u>

- (a) An agency or other entity providing property for redistribution, for disposal, or for sale at the time of a state auction or other competitive bidding process shall:
  - (1) Transport the item to the surplus property warehouse at White Farm on Clinton Street in Concord, or to such other location as specified by state surplus management, unless state surplus management concludes that, because of the item's size, nature or present location, it is more efficient or cost-effective to redistribute or dispose of the item from its present location or to have the item picked up from that location by state surplus management; and
  - (2) Deliver the property in accordance with any delivery instructions provided by state surplus management.
- (b) Property shall be delivered to the White Farm on Clinton Street in Concord only on days and at times when the White Farm is open to accept deliveries.
- (c) Except as provided in Adm 611.05 or in (d) below, no agency or other entity submitting property for redistribution or disposal by state surplus management shall remove parts, pieces or portions of vehicles, machinery, equipment or other items which will be submitted to state surplus management, nor in any way diminish the item so as to render it less useful to another owner.
- (d) If, at any time, an agency wishes to remove parts, pieces or portions of vehicles, machinery, equipment or other items which may ultimately be subject to surplus under these rules, the agency shall request permission to do so by submitting a writing to state surplus management which states:
  - (1) The part, piece or portion of the property that the agency wishes to remove;
  - (2) The approximate value of the item to be removed and whether or not it will be included on the agency's inventory of property under RSA 21-I: 11, VIII.;
  - (3) What the agency intends to do with the removed item; and
  - (4) Why the agency wishes to remove the item, including a description of why the agency believes that the removal and proposed use would be financially beneficial to the agency.

- (e) State surplus management shall review requests submitted under (d) above and shall make a recommendation to the commissioner or his or her designee regarding whether or not permission should be granted, including in the recommendation:
  - (1) An assessment of the value of property which is to be removed;
  - (2) An assessment of the post-removal value of the property from which the part, piece or portion is to be taken; and
  - (3) Whether the removal would be in the overall financial interest of the state.
- (f) The commissioner of administrative services or his or her designee shall approve the removal of parts, pieces or portions of vehicles, machinery, or equipment under (d) above if he or she concludes that:
  - (1) The removal would be financially beneficial to the agency;
  - (2) The removal would, based upon a balancing of the financial benefit to the agency against any negative impact on state funds, be in the financial interest of the state; and
  - (3) If required pursuant to RSA 21-I: 11, VIII., the part, piece or portion removed will be included on the agency's inventory of property.

### Adm 611.04 Repairs by State Surplus Management

(a) The cost of any repairs conducted by state surplus management in order to maximize the potential sales price of an item submitted to it for redistribution or disposal, including the cost of purchasing parts, shall be deducted from the proceeds that are returned under Adm 611.15 or Adm 611.16.

## Adm 611.05 <u>Submission of Computers or Computer Components to State Surplus</u> <u>Management</u>

- (a) Entities that are part of New Hampshire state government that submit any computer or computer component designed to store data to state surplus management for redistribution or disposal shall:
  - (1) Completely remove or destroy the hard drive or other component of the computer on which data is located, or completely degauss or otherwise completely remove or destroy any data on the computer or component, including data located on any hard drive; and
  - (2) Submit to state surplus management, in addition to the declaration of surplus form described in Adm 611.07, at the time of the delivery of the computer or computer component for disposal, a certification of hard-drive disposition form as described in (b) below.
- (b) On the hard-drive disposition form noted in (a) above, the entity submitting the item shall provide the following:
  - (1) A description of the item submitted, including the make and model;

- (2) The serial number of the item;
- (3) Whether or not the hard-drive or similar data storage component has been removed from the item;
- (4) A description of the method used to destroy, degauss or otherwise completely eliminate the data on the computer or component;
- (5) If software or a degaussing device was used to destroy or degauss data, the manufacturer, version and year of manufacture of the item used;
- (6) If the destruction or degaussing of data was accomplished by a facility other than the entity submitting the item to state surplus management, the name of the facility, date of destruction or degaussing and a description of the equipment or software used to accomplish the destruction or degaussing;
- (7) The name of the representative of the submitting entity that was responsible for assuring the destruction of the data;
- (8) The name of the entity submitting the item to state surplus management;
- (9) The work address and telephone number of the person identified in (b) (7) above;
- (10) The signature of the person identified in (b) (7) above, which signature shall certify that:
  - a. The data on the above-identified item has been completely destroyed, degaussed or otherwise completely removed from the item as indicated on the form;
  - b. The information provided on the form is true, accurate and complete; and
  - c. The signer acknowledges that, pursuant to RSA 641:3, knowingly making a false representation on the form is punishable as a crime; and
- (11) The date of the signature provided in (b) (10) above.

### Adm 611.06 Initial Estimated Disposal Value.

- (a) Pursuant to RSA 21-I: 12, I. (d), upon acceptance of an item from any entity that is part of New Hampshire state government, other than property obtained by the state as the result of a forfeiture or seizure, state surplus management shall assign to the item an initial estimated disposal value, consisting of an estimate of the item's likely sales price, which shall:
  - (1) Include an estimate of the item's fair market value;
  - (2) Include the amount of any handling charge described in RSA 21-I: 11, VIII; and
  - (3) Take into account such factors as may bear upon the amount for which the item may sell, such as condition.
- (b) State surplus management shall, upon an item being offered for redistribution or disposal, note on the form described at Adm 611.07 either:
  - (1) That the item possesses no value under (a) above; or

- (2) The initial estimated disposal value.
- (c) In the event that circumstances prior to the redistribution or disposal of the property indicate that the initial estimated disposal value is no longer accurate, that value shall be adjusted.

Readopt with amendments and renumber Adm 611.03, effective 5-11-05 (Document #8310), as amended effective 7-6-09 (Document #9501), as Adm 611.07 to read as follows:

Adm 611.07 Declaration of Surplus, Submission and Forms.

- (a) Agencies as defined in Adm 611.01 (a) shall:
  - (1) Immediately declare all surplus items, including vehicles that are no longer part of an agency's fleet, as such on the declaration of surplus form described below; and
  - (2) Make a disposition of surplus property that state surplus management concludes has a value, as well as items obtained by way of forfeiture and seizure, only through the processes described in Adm 611.
- (b) Unless otherwise allowed by law, agencies shall not gift state property, including but not limited to property that was used by a retiring employee in the course of his or her employment with the state, to individuals, but may request permission of the governor and executive council to make such disposition.
- (c) Unless otherwise provided by law or specified in a contract entered into by the state, the obligation to declare surplus property as such on the declaration of surplus form shall extend to items which an agency did not obtain by way of direct purchase, such as wood harvested from state property.
- (d) Entities other than agencies as defined in 611.01 (a) which are a part of state government that wish to submit property for redistribution or disposal through the state surplus management system shall complete the declaration of surplus form described below.
- (e) Prior to submitting either a declaration of surplus form or surplus property, entities that are not agencies as defined in Adm 611.01 (a), as well as any agency submitting property that was obtained by the state as the result of a forfeiture or seizure, shall contact state surplus management to advise that they wish to submit property for redistribution or disposal through the state surplus management system.
  - (f) The declaration of surplus form shall consist of the following parts:
    - (1) Part A, entitled "Declaration of Surplus Property," on which the agency or other entity making the submission shall provide the following information or, if it is not applicable, so indicate:
      - a. The name of the agency or other entity making the submission;

- b. The date that the agency or other entity completed the form;
- c. The location of the property;
- d. A description of the item that has been declared surplus, including the item's size, model and materials;
- e. A description of the condition of the item;
- f. The following codes identifying the account into which proceeds from the sale of the submitted item, if any, are to be deposited:
  - 1. The revenue account code, if any, together with the activity code, if any;
  - 2. The fund code:
  - 3. The agency code, if any; and
  - 4. The organization code;
- g. The name of the contact person for the agency or other entity submitting the form;
- h. The telephone number and e-mail address of the contact person for the agency or other entity submitting the form;
- i. The name, and the signature, of the person who completed the form; and
- j. The name, and the signature, of the representative of the agency or other entity who has approved the making of the declaration of surplus; and
- (2) Part B, entitled "Surplus Vehicle Checklist," which shall be completed only when the declaration of surplus involves a motor vehicle.
- (g) On Part B of the form noted in Adm 611.07 (f) (2) above, the submitting agency or other entity shall provide:
  - (1) The date that the form was completed;
  - (2) The registration or equipment number last held by the vehicle;
  - (3) The name of the agency or other entity submitting the vehicle;
  - (4) The name of the contact person for the agency or other entity submitting the vehicle:
  - (5) The year of the vehicle;
  - (6) The make of the vehicle;
  - (7) The body style of the vehicle;
  - (8) The mileage on the vehicle;
  - (9) The type of engine in the vehicle;

- (10) The type of transmission in the vehicle;
- (11) The color of the vehicle;
- (12) Whether or not the vehicle will start;
- (13) Whether the vehicle can be jump-started;
- (14) Whether or not the vehicle can be driven in its present condition;
- (15) A list of the repairs needed;
- (16) A list of all recent repairs;
- (17) A list of any options or special accessories on the vehicle;
- (18) Any other remarks the entity submitting the vehicle believes are pertinent to the condition or identification of the vehicle, including, if not identified elsewhere on the form, the serial number of the vehicle and the date that it was last inspected;
- (19) Whether or not the declaration of surplus form is attached;
- (20) Whether or not the vehicle checklist has been fully completed;
- (21) Whether or not 2 sets of keys have been provided;
- (22) Whether or not all decals have been removed from the vehicle;
- (23) Whether or not the vehicle has been cleaned;
- (24) Whether or not any operative fuel tank is at least ¼ full;
- (25) Whether or not all fluid levels are full;
- (26) Whether or not a current title or registration has been provided; and
- (27) The signature, telephone number and e-mail address of the person completing the form.
- (h) If an odometer reading on a vehicle is not the actual mileage on a vehicle, the entity submitting the vehicle shall, in addition to the forms described above, submit a written statement signed by an authorized representative of the entity submitting the vehicle disclosing that the true mileage of the vehicle is unknown.
- (i) The description of the condition of the item noted in (f) (1) e. above shall contain at least:
  - (1) A general description of the overall condition of the item, including whether or not it is functional for the purpose for which it was manufactured;
  - (2) A notation of any damage to the item;
  - (3) An indication of whether any part of the item, or piece affixed to the item, has been, or will be, removed prior to delivery to surplus property management; and
  - (4) An indication of whether any parts or pieces of the item are missing.

- (j) In addition to the declaration of surplus form described above, each agency or other entity submitting any computer or computer component designed to store data shall submit to state surplus management a hard-drive disposition form as described in Adm 611.05.
- (k) Any agency or other entity wishing to submit property to state surplus management for redistribution or disposal shall submit the applicable, fully executed forms described above to state surplus property management at 144 Clinton Street, Concord, NH 03301-2297.

## Readopt with amendments and renumber Adm 611.04, effective 5-11-05 (Document #8310), as Adm 611.08, to read as follows:

#### Adm 611.08 Motor Vehicles.

- (a) Except as provided in (b) below, an agency or other entity submitting a motor vehicle for redistribution or disposal under these rules shall, for each vehicle, submit to state surplus property at 144 Clinton Street, Concord, NH 03301-2297, at the time of delivery of the vehicle:
  - (1) Two sets of keys, if available for the vehicle;
  - (2) Unless exempted under RSA 261:3, a certificate of title; and
  - (3) If exempted under RSA 261:3, either:
    - a. A current registration;
    - b. A fully executed form TDMV 19A; or
    - c. A fully executed form TDMV 22A.
- (b) An agency or other entity submitting a trailer as defined in RSA 259:113 for redistribution or disposal under these rules shall, for each trailer, submit to state surplus property at 144 Clinton Street, Concord, NH 03301-2297, at the time of delivery of the vehicle:
  - (1) Unless exempt under RSA 261:3, I. (j) or (k), a certificate of title;
  - (2) If exempt under RSA 261:3, I. (j) or (k), either:
    - a. A current registration;
    - b. A fully executed form TDMV 19A; or
    - c. A fully executed form TDMV 22A.
- (c) Motor vehicles delivered without the items required by (a) or (b) above, or without the materials required by Adm 611.07, shall not be accepted for surplus disposition.
  - (d) An agency or other entity submitting a vehicle for surplus distribution shall:

- (1) Clean the vehicle;
- (2) Remove all existing decals from the vehicle;
- (3) Fill any operative fuel tank or charging system of the vehicle at least ½ full;
- (4) Fill fluid levels for the vehicle's other operative systems; and
- (5) Not deliver the vehicle in a condition in which gasoline or other potentially hazardous substances are leaking from the vehicle.
- (e) An agency that wishes to procure any motor vehicle as defined in RSA 21-I: 19-i, II (b) from state surplus management, by redistribution or otherwise, shall:
  - (1) Not do so without first following the processes of RSA 21-I:19-i and obtaining approval for the procurement of that vehicle; and
  - (2) Submit a copy of the approval to state surplus management.
- (f) If an agency's procurement of a vehicle through state surplus management would result in an increase in the size of an agency's motor vehicle fleet as previously approved by the governor and executive council, the agency shall submit to state surplus management a copy of the approval for the fleet increase.
- (g) Unless an agency has received permission from the governor and executive council to increase the size of its fleet, an agency that receives a vehicle, by way of redistribution or otherwise, shall, in exchange, and in addition to the form specified at Adm 611.07, submit to state surplus management, a like or similar vehicle, so that the total size of the agency's fleet of vehicles remains unchanged.
- (h) For the purposes of (g) above, unless the department of administrative services has, pursuant to RSA 21-I: 19-i, allowed a purchase of a different type of vehicle to replace one which is subject to surplus, "like or similar vehicle" means a car, if the vehicle obtained by the agency is a car, a truck if the vehicle obtained by the agency is a truck, and a specific piece of heavy equipment, such as a backhoe, if the vehicle obtained is a specific type of heavy equipment, such as a backhoe.

Readopt with amendments and renumber Adm 611.05, effective 5-11-05 (Document #8310), as Adm 611.09, to read as follows:

### Adm 611.09 Trade-Ins.

(a) An agency shall not utilize an item that would otherwise be declared surplus, and that would therefore be subject to redistribution or disposal under these rules, as a trade-in for goods or services that the agency intends to obtain from an other entity without first contacting surplus property management and requesting authorization to use of the item as a trade-in.

- (b) No item shall be used as a trade-in under (a) above unless surplus property management concludes that the proposed trade-in value is greater than the estimated disposal value of the item if it was to be offered for sale by the division.
- (c) If the trade-in value is estimated by surplus property management under (b) above to be financially beneficial to the state, and authorization for trade-in is given, that authorization shall apply only to the specific transaction.

## Readopt with amendments and renumber Adm 611.06, effective 5-11-05 (Document #8310), as Adm 611.10, to read as follows:

Adm 611.10 <u>Viewing of Surplus Items</u>. Items that have been submitted for redistribution or disposal under these rules, or digital photographs thereof, shall be available for viewing at such times and at such places as the division specifies for this purpose.

## Readopt with amendments and renumber Adm 611.07, effective 5-11-05 (Document #8310), as Adm 611.11, to read as follows:

#### Adm 611.11 Redistribution of Surplus Property.

- (a) Items submitted to state surplus property management that are subject to redistribution and are determined to have further useful life shall be redistributed in accordance with the procedure set forth below.
- (b) Agencies having a need for any item that has been or may be submitted for redistribution or disposal shall make a request for the item to surplus property management, either orally or in writing.
- (c) Entities which are part of the government of the state of New Hampshire, but which are not agencies as defined in Adm 611.01 (a), that have need for any item that has been or may be submitted for redistribution or disposal may request the item from surplus property management, either orally or in writing.
- (d) Requests under (b) or (c) above that remain unfilled after 6 months shall be considered cancelled.

- (e) Entities that are part of the government of the state of New Hampshire, and no other person or entity, may acquire an item submitted to surplus property management which is subject to redistribution for a period of 14 days after the acceptance of the item under Adm 611.02, unless another form of disposition is warranted under RSA 21-I: 12, I (d).
- (f) Items shall be redistributed under (e) above to agencies and entities which are part of the government of the state which have made a request under (b) or (c) above, on a first-come, first-served basis.

Readopt with amendments and renumber Adm 611.08, effective 5-11-05 (Document #8310), as Adm 611.12, to read as follows:

Adm 611.12 <u>Receipts and Invoices</u>. All recipients of property redistributed or disposed of under these rules shall receive an invoice or receipt and shall make payment according thereto.

Readopt with amendments and renumber Adm 611.09, effective 5-11-05 (Document #8310), as Adm 611.13 and Adm 611.14, to read as follows:

### Adm 611.13 Items Not Otherwise Redistributed.

- (a) If no entity wishes to acquire an item by way of redistribution under Adm 611.11, and if no other form of disposition has occurred under RSA 21-I: 12, I. (d), the item shall, following the 14 day period set forth in Adm 611.11 (e), be offered for sale to the public in the manner specified in RSA 21-I: 12, I (d).
- (b) Any property submitted to state surplus management that is estimated to be of no net value, or no estimated disposal value, shall be discarded, returned to the custody of the entity which submitted it, or held by state surplus management for potential future sale.
- (c) Property which is returned pursuant to (b) above shall be picked up and removed by the entity which submitted it.

### Adm 611.14 Closing Date.

If items are to be disposed of by way of an auction or other competitive bidding process, state surplus management shall establish a closing date.

## Readopt with amendments and renumber Adm 611.10, effective 5-11-05 (Document #8310), as Adm 611.15 to read as follows:

### Adm 611.15 Revenue Generated from the Disposal of Property.

- (a) Revenue generated from the disposal of property shall be distributed as follows:
  - (1) Revenue generated from the disposal of items that were originally purchased by the entity which submitted the item with funds from the general revenue fund under RSA 6: 12 shall revert to the general fund, less the handling charge described at RSA 21-I: 11, VIII., any cost of pick-up under Adm 611.03 (a) (1), and any cost of repairs under Adm 611.04;
  - (2) Revenue generated from the disposal of items that were originally purchased by the entity which submitted the item with funds from a source other than the general revenue fund under RSA 6:12, such as a restricted fund, shall revert to the fund that was originally used to procure the item, less the handling charge described at RSA 21-I:11, VIII., any cost of pick-up under Adm 611.03 (a) (1), and any cost of repairs under Adm 611.04; and
  - (3) Revenue generated from the disposal of forfeited or seized property, or from the disposal of other property, such as donated property, which did not originate with an agency purchase, shall revert to the fund used by the entity to receive payments relative to the property, less the handling charge described at RSA 21-I:11, VIII., any cost of pick-up under Adm 611.03 (a) (1) and any cost of repairs under Adm 611.04.
- (b) The amount of the handling charge noted in Adm 611.15 (a) above shall be in an amount sufficient to cover the average actual cost of handling as specified by the commissioner, after receiving the recommendation of the director, according to the criteria set forth in RSA 21-I: 11, VIII.
- (c) Revenue generated shall be applied first to the handling charge described in RSA 21-I: 11, VIII, then to any cost of repairs under Adm 6ll.04, then to any cost of pick-up under Adm 611.03 (a) (1), and only the remainder, if any, shall be to applied to the account of the entity which submitted the item. If the revenue generated is insufficient to fully cover these charges and costs, no amount shall be distributed to the agency account.

### Adopt Adm 611.16, Adm 611.17 and Adm 611.18 to read as follows:

### Adm 611.16 Charges and Procedures in the Case of Redistribution of Property.

- (a) If an entity which is part of state government acquires property by way of redistribution and makes payment using a fund which is the same fund as was used by the entity submitting the property to procure it (for example, if an agency uses the general revenue fund of RSA 6:12 to acquire property redistributed from an agency that used the general fund to procure it):
  - (1) The acquirer shall pay to state surplus management the handling charge specified by RSA 21-I: 11, VIII; and
  - (2) The entity submitting the item to surplus shall pay the cost of repairs, if any, under Adm 611.02, and any cost of pick-up under Adm 611.03 (a) (1).
- (b) If an entity which is part of state government acquires property by way of distribution and makes payment using a fund which is different from the fund used to procure the property (for example, if an agency uses general fund revenue to acquire property redistributed from an agency that used a restricted fund to procure it):
  - (1) The acquirer shall pay to state surplus management the estimated disposal value established under Adm 611.06, including the handling charge specified by RSA 21-I: 11, VIII; and
  - (2) State surplus management shall distribute the revenue generated to the particular fund used by the entity submitting the property to procure that property, less the handling charge under RSA 21-I: 11, VIII., any cost of pick-up under Adm 611.03 (a) (1), and the cost of repairs, if any, under Adm 611.02.
- (c) If, by way of redistribution, an entity which is part of state government acquires property, such as donated property, which did not originate with a purchase by another entity of state government:
  - (1) The acquirer shall pay to state surplus management the estimated disposal value established under Adm 611.06, including the handling charge specified by RSA 21-I: 11, VIII; and
  - (2) State surplus management shall distribute the revenue generated to the particular fund used by the entity submitting to receive payments relative to the property, less the handling charge under RSA 21-I: 11, VIII., any cost of pick-up under Adm 611.03 (a) (1), and the cost of repairs, if any, under Adm 611.02.
- Adm 611.17 <u>Contracts for Disposition of Property Entered Into By the Division of Plant and Property Management</u>. If, pursuant to RSA 21-I: 17-c, the division has entered into a contract for the disposition of certain property, such as a contract for recycling of materials under RSA 9-C, agencies shall use such contracts for the disposition of that property unless granted a waiver pursuant to RSA 21-I: 17-c.

Adm 611.18 <u>Submissions to State Surplus Management By Entities Other than Agencies.</u> Entities that are part of New Hampshire state government, but which are not agencies as defined in Adm 611.01 (a), that submit property to state surplus management by the use of the form described in Adm 611.07 shall:

- (a) Be deemed to agree that state surplus management may redistribute or dispose of the submitted property as provided in these rules; and
- (b) Receive and make, or allow to be received or made, such distributions of funds as are provided in Adm 611.15 or Adm 611.16.

## Readopt with amendments Adm 612.01, effective 5-11-05 (Document #8310), cited and to read as follows:

### PART Adm 612 FEDERAL SURPLUS FOOD DISTRIBUTION PROGRAM

Adm 612.01 <u>Purpose.</u> These rules set forth requirements for applicants for and participants in the following federal surplus food programs addressed in 7 CFR Chapter II Parts 210 to 299:

- (a) National School Lunch Program;
- (b) Child and Adult Care Food Program;
- (c) Summer Food Service Program for Children;
- (d) Summer Camp Food Service Program;
- (e) Charitable institution programs; and
- (f) The Emergency Food Assistance Programs.

Readopt Adm 612.02 through Adm 612.03, effective 5-11-05 (Document #8310), to read as follows:

Adm 612.02 Applicability of Federal Regulations.

- (a) The surplus distribution section shall act relative to the programs described above in a manner which accords with federal regulations relating to those programs, as set forth at 7 CFR Chapter II, Parts 210 to 299.
- (b) The definitions, standards, requirements, guidelines and procedures relative to the administration of federal food distribution programs shall be as set forth in 7 CFR Chapter II, Parts 210 to 299.
- (c) Eligibility to receive commodities described in this part shall be determined in accordance with 7 CFR Chapter II, Parts 210 to 299.

### Adm 612.03 Definitions.

- (a) "Applicant" means an entity that requests participation in one of the programs listed in Adm 612.01.
- (b) "Federal surplus food distribution program" means the program for the distribution of food donated by the United States government that is handled by the surplus distribution section under RSA 21-I: 12 I. (e).
  - (c) "FIFO system" means a system for the rotation of an inventory.
- (d) "Letter of determination" means a writing from the United States Internal Revenue Service indicating that that the applicant has been determined to be tax exempt under 26 USC Section 501 of the Internal Revenue Code.
- (e) "Surplus distribution agreement form" means a written agreement for the distribution and use of commodities donated by the United States government by which an applicant applies for participation in one of the programs listed in Adm 612.01.

### Readopt with amendments Adm 612.04, effective 5-11-05 (Document #8310), to read as follows:

- Adm 612.04 Application Procedure for Participation in the National School Lunch Program, Child and Adult Care Food Program, or Summer Food Service Program for Children. To apply for participation in the National School Lunch Program, the Child and Adult Care Food Program, or the Summer Food Service Program for Children, the applicant shall:
- (a) Before submitting the surplus distribution agreement form described at Adm 612.05 below, be approved by the state department of education, food and nutrition service as eligible for the National School Lunch matching fund program under RSA 186:13, XI;
- (b) Once approved under RSA 186:13, XI, file with the federal surplus food distribution program a fully executed surplus distribution agreement form containing all information required by 7 CFR Chapter II, 250.12 (b); and
- (c) Submit to the federal surplus food distribution program those supporting materials required by these rules.

### Readopt Adm 612.05, effective 5-11-05 (Document #8310), to read as follows:

Adm 612.05 Surplus Distribution Agreement Form.

- (a) If required to utilize a surplus distribution agreement form under these rules, an applicant shall provide the following on a surplus distribution agreement form meeting the requirements of 7 CFR Chapter II, 250.12 (b), provided by the surplus distribution section:
  - (1) The name of the applicant;
  - (2) The applicant's street address;
  - (3) The city and state in which the applicant's street address is located;
  - (4) The applicant's zip code;
  - (5) The applicant's e-mail address;
  - (6) The name of a contact person designated by the applicant;
  - (7) The applicant's telephone number;
  - (8) The applicant's fax number;
  - (9) The signature of an authorized representative of the applicant;
  - (10) The title of the person signing the form on behalf of the applicant;
  - (11) The date of the signature noted in (9) above; and
  - (12) Under the heading "Address Form":
    - a. On the lines entitled "facility name," the name of each institution or location which will be utilizing commodities under the program;
    - b. For each institution or location noted in (12) a. above, the name of the lunch director or other person who is responsible for the management of the food program at each location or institution;
    - c. For each institution or location noted in (12) a. above, the name of the person at the institution or location that is to be contacted regarding the items that are to be delivered;
    - d. The telephone number of each person listed in (12) c. above;
    - e. The fax number of each person listed in (12) c. above;
    - f. The e-mail address of each person listed in (12) c. above, if any;
    - g. For each institution or location noted in (12) a. above, the name of the person that is to be contacted regarding any accounts payable;
    - h. The telephone number of each person listed in (12) g. above;
    - i. For each institution or location noted in (12) a. above, the address to which billing is to be sent; and
    - j. For each institution or location noted in (12) a. above, the address to which delivery, if any, is to be made, including the street number, city and state.

(b) The authorized representative of the applicant signing under (a) (9) above shall certify by his or her signature that the applicant agrees to the terms of the applicant's agreement for distribution and use of commodities donated by the federal government, including any assurances regarding civil rights, which terms shall be set forth or incorporated in the form.

## Readopt with amendments Adm 612.06 and Adm 612.07, effective 5-11-05 (Document #8310), to read as follows:

- Adm 612.06 <u>Supporting Materials Required for Participation in the National School</u> <u>Lunch Program</u>. In addition to the fully executed agreement form described in Adm 612.05 above, an applicant for participation in the national school lunch program shall submit:
- (a) If the applicant utilizes or is considering utilizing a food service management company as defined in 7 CFR Chapter II, Section 250.3, a food service management company form provided by the surplus distribution section on which the applicant shall provide:
  - (1) The name of each facility or location that does or may utilize a food service management company;
  - (2) The address of each facility or location identified in (a) (1) above, including the street address, city and state;
  - (3) The name of the person at each facility or location that is to be contacted regarding the facility or location's use of a food service management company;
  - (4) The telephone number of each person identified in (a) (3) above;
  - (5) For each facility or location identified in (a) (1) above, the name of the food service management company;
  - (6) The address of each food service management company identified in (a) (5) above, including the street address, city and state;
  - (7) The name of the person at each food service management company that is to be contacted regarding each facility or location's use of a food services management company; and
  - (8) The telephone number of each person identified in (a) (7) above; and
- (b) If the applicant utilizes a food service management company as defined in 7 CFR Chapter II, Section 250.3, a full copy of a written contract between the applicant and the food service management company.
- Adm 612.07 <u>Supporting Material Required for Participation in the Child and Adult Care Food Program.</u> In addition to the fully executed agreement form described in Adm 612.05 above, an applicant for participation in the child and adult care food program shall submit:
- (a) If the applicant utilizes or is considering utilizing a food service management company as defined in 7 CFR Chapter II, Section 250.3, a food service management company form on which the applicant shall provide the information specified in Adm 612.06 (a);
- (b) If the applicant utilizes a food service management company as defined in 7 CFR Chapter II, Section 250.3, a full copy of a written contract between the applicant and the food services management company;

- (c) A fully executed commodities in lieu of cash statement form provided by the surplus distribution section on which the applicant shall provide:
  - (1) Whether the applicant is either:
    - a. An adult day care facility, together with a specification of the approximate number of meals served per year; or
    - b. A child care facility, together with a specification of the approximate number of meals served per year.
  - (2) The name of the applicant;
  - (3) The applicant's address, including the street address, city, state and zip code;
  - (4) The signature of the person submitting the application on behalf of the applicant, which signature shall constitute the applicant's election to participate in the program, whereby commodities are received in lieu of cash; and
  - (5) The title of the person signing the form.

## Readopt with amendments Adm 612.08 through Adm 612.10, effective 5-11-05 (Document #8310), to read as follows:

Adm 612.08 <u>Supporting Material Required for Participation in the Summer Food Service Program for Children</u>. In addition to the fully executed agreement form described in Adm 612.05 above, an applicant for participation in the summer food service program for children shall submit:

- (a) A fully executed rider to agreement form provided by the surplus distribution section on which the applicant shall provide:
  - (1) The complete name of the camp, as defined in 7 CFR Chapter II, Part 225;
  - (2) The summer address of the camp identified in (a) (1) above, including the street address, city, state and zip code;
  - (3) The telephone number of the camp identified in (a) (1) above;
  - (4) The name of the sponsor, as defined in 7 CFR Part II, Section 225.2;
  - (5) The telephone number of the sponsor;
  - (6) The winter address of the sponsor, including the street address, city, state and zip code;

- (7) If the type of camp program in which the applicant participates is the commodity only camp, special milk program as described in 7 CFR Chapter II, Part 215, whether the applicant is utilizing a food service management company as defined in 7 CFR Chapter II, Section 250.3;
- (8) If the type of camp program in which the applicant participates is the commodity only camp, special milk programs as described in 7 CFR Chapter II, Part 215 and if the applicant is utilizing a food service management company as defined in 7 CFR Chapter II, Section 250.3, the name of the food service management company;
- (9) The signature of the authorized representative of the applicant, certifying that the information provided on the form and the documentation provided in support of the application are true, accurate, complete and unaltered;
- (10) The title of the person identified in (a) (9) above; and
- (11) The date that the rider to the agreement form was signed;
- (b) If the applicant utilizes a food service management company as defined in 7 CFR Chapter II, Section 250.3, a full copy of a written contract between the applicant and the food services management company;
- (c) If the applicant facility is open for 10 days or more per calendar year, a copy of the license required under RSA 485-A: 24, issued by the department of environmental services;
- (d) If the applicant is a private nonprofit organization, a letter of determination from the United States Internal Revenue Service:
- (e) A fully executed civil rights compliance review form provided by the surplus distribution section on which the applicant shall provide:
  - (1) The name of the camp or other facility;
  - (2) The address of the camp or other facility, including street address, city, state and zip code;
  - (3) The name and title of the official responsible for the overall management of camp or facility;
  - (4) The name and address of the sponsor;
  - (5) The actual current number of individuals participating in the program as determined from the previous year's records who are:
    - a. American indian or Alaskan native;
    - b. Black;
    - c. White;
    - d. Asian or Pacific Islander; and
    - e. Hispanic;

- (6) The total actual number of campers or other individuals participating in the program as determined from the previous year's records;
- (7) Whether or not the camp or facility limits or denies admission because of race, color, national origin, sex, age or disability;
- (8) Whether membership in any organization is a prerequisite for admission and, if so, the name of the organization in which membership is required;
- (9) Whether or not membership in any organization listed in (8) above is open to all minority groups;
- (10) Whether or not the organization listed in (8) above has minority group members;
- (11) The number of persons requesting admission or referred to the camp or facility in the previous program year;
- (12) The number of persons in (11) above who were minority group members;
- (13) The number of persons accepted to the camp in the prior program year;
- (14) The number of persons in (13) above who were minority group members;
- (15) The criteria that are used in selecting applicants for admission;
- (16) Whether the camp has announced publicly that admission to the camp is open to all persons regardless of race, color, national origin, age, sex or disability;
- (17) If the camp has announced publicly that admission to the camp is open to all persons regardless of race, color, national origin, age, sex or disability, the date when media was used to make this announcement, together with copies of any brochures, news articles, bulletins or other publications, for transmission to the United States department of agriculture food and consumer services regional office;
- (18) If the camp has announced publicly that admission to the camp is open to all persons regardless of race, color, national origin, age, sex or disability, but copies of media publications under (17) above are not available, the date of the publication and a description of the media used to make the announcement;
- (19) Whether or not all services and facilities, such as recreational and social areas, study areas and lavatories, are routinely used by all persons without regard to race, color, national origin, sex, age or disability;
- (20) Whether the United States Department of Agriculture's ". . . And Justice for All" poster is displayed at the camp;
- (21) Whether or not brochures, pamphlets or other publications used by the camp to publicize its program contain a nondiscrimination statement;
- (22) Whether or not records of the participation of participants in the applicant's program, including denials, maintained by race;
- (23) Whether or not the camp is receiving federal financial assistance from another federal agency and, if so, the name of the agency;

- (24) Any remarks of the applicant relative to the answers provided on the form;
- (25) The signature of the camp's authorized representative, certifying that the information provided on the form and the documentation provided in support of the application are true, accurate, complete and unaltered;
- (26) The title of the person signing the form; and
- (27) The date that the form was signed.
- Adm 612.09 <u>Application Procedure for Participation in the Summer Camp Food Service Program</u>. To apply for participation in the Summer Camp Food Service Program described at 7 CFR Chapter II, 250.62, an applicant shall submit to the surplus distribution section:
- (a) A fully executed surplus distribution agreement form containing all information required by 7 CFR Chapter II, 250.12 (b), as described at Adm 612.05 above;
- (b) A fully-executed rider to agreement form containing the information described at Adm 612.08 (a) (1) (6) and (9) (11) above;
- (c) In accordance with 7 CFR, Part II, Section 250.67 (a), a letter of determination verifying the applicant's tax-exempt status under the United States Internal Revenue Code;
- (d) If the applicant facility is open for 10 days or more per calendar year, a copy of the license required under RSA 485-A: 24, issued by the department of environmental services; and
- (e) A fully executed civil rights compliance review form as described at Adm 612.08 (e) above.
- Adm 612.10 <u>Application Procedure for Participation in Charitable Institution Programs.</u> To apply for participation in the charitable institution program under 7 CFR Part II, Section 250.67, an applicant shall submit to the surplus distribution section:
- (a) A fully executed surplus distribution agreement form containing all information required by 7 CFR Chapter II, 250.12 (b), as described at Adm 612.05 above;
- (b) A fully executed financial data form provided by the surplus distribution section, on which the applicant shall provide:
  - (1) Under the heading "facility name," the name of the applicant;
  - (2) The applicant's street address;
  - (3) The city, state and zip code of the applicant's street address;
  - (4) The applicant's telephone number;
  - (5) Whether the applicant is:
    - a. A nonprofit tax-exempt activity;
    - b. A public entity which is not educational in nature or a penal institution;
    - c. A hospital;
    - d. A correctional institution that conducts rehabilitation programs; or

- e. Another type of institution, facility or program, together with a description of the services provided by, and the functions of, the institution, facility or program;
- (6) If the applicant is not a governmental entity, the date of any tax exemption received from the United States Internal Revenue Service, attaching thereto a copy of the documentation of the exemption received from the internal revenue service;
- (7) If a blanket or group exemption has been received from federal taxation, a description of the blanket exemption;
- (8) Whether or not a food service management company as defined in 7 CFR Chapter II, Section 250.3 is employed or to be employed by the applicant, and, if so, a copy of any contract with the food service management company;
- (9) Whether the applicant serves either:
  - a. Breakfast;
  - b. Lunch;
  - c. Dinner; or
  - d. A combination of the foregoing, together with a specification of which meals are served.
- (10) Under the heading "The following method will be utilized to determine extent of eligibility":
  - a. The average daily number of eligible persons served;
  - b. The percentage by which income was subsidized, calculated according to form B-1 provided by the surplus distribution section and described at Adm 612.10 (c) below;
  - c. The eligible caseload subtotal, consisting of the number in (10) a. above multiplied by the percentage in (10) b. above;
  - d. The number of children participating in school lunch programs; and
  - e. The total eligible caseload, determined by subtracting the number of children participating in school lunch programs identified in (10) d. above from the eligible caseload subtotal identified in (10) c. above;
- (11) The signature of a representative of the applicant authorized to sign the form on behalf of the applicant, certifying the following in a statement preprinted on the form:
  - a. The information provided on the application form and the documentation provided in support of the application are true, accurate, complete and unaltered; and
  - b. The applicant acknowledges that, pursuant to RSA 641:3, knowingly making a false representation on the application form is punishable as a crime;
- (12) The title of the person signing the form; and

- (13) The date that the form was signed;
- (c) A fully executed form B-1 provided by the surplus distribution section and appearing on the reverse of financial data form described in (b) above, on which the applicant shall provide:
  - (1) The months and years of the financial records or data utilized to complete the form;
  - (2) The annual amount of funds received by the institution that are derived from subsidized income as described in 7 CFR, Chapter II, Section 250.67 (c);
  - (3) The annual amount of funds received by the institution that are derived from nonsubsidized income as described in 7 CFR, Chapter II, Section 250.67 (c);
  - (4) The total amount of income derived from all sources, whether subsidized or nonsubsidized;
  - (5) The percentage by which the total income of the applicant was subsidized, calculated by dividing the amount of subsidized income listed under (c) (2) above by the amount of total income listed under (c) (4) above;
  - (6) The printed or typewritten name of the person who compiled the information in (c) (1) through (5) above;
  - (7) The title of the person who compiled the information in (c) (1) through (5) above;
  - (8) The date that the form was executed; and
  - (9) The signature of a representative of the applicant authorized to sign the form on behalf of the applicant, certifying the following in a statement preprinted on the form:
    - a. The information provided on the application form and the documentation provided in support of the application are true, accurate, complete and unaltered; and
    - b. The applicant acknowledges that, pursuant to RSA 641:3, knowingly making a false representation on the application form is punishable as a crime;
- (d) A fully executed civil rights compliance review form provided by the surplus distribution section as described in Adm 612.08 (e) above;
- (e) If licensure, certification or other approval is required from any governmental entity for the activities conducted by the applicant, such as for bedding capacity or on-site feeding, a copy of the current license, certification or approval;
- (f) If the applicant utilizes or is considering utilizing a food service management company as defined in 7 CFR Chapter II, Section 250.3, a food service management company form on which the applicant shall provide the information specified in Adm 612.06 (a);
- (g) If the applicant utilizes a food service management company as defined in 7 CFR Chapter II, Section 250.3, a full copy of a written contract between the applicant and the food services management company;

- (h) In accordance with 7 CFR, Part II, Section 250.67(a), if the applicant is not a governmental entity, letter of determination verifying the applicant's tax-exempt status under the United States Internal Revenue Code; and
- (i) If the applicant is an adult correctional institution, a written statement signed by an authorized representative of the applicant certifying that the institution conducts rehabilitation programs as described at 7 CFR 250.67 (b) (5).

### Readopt Adm 612.11, effective 5-11-05 (Document #8310), to read as follows:

Adm 612.11 <u>The Emergency Food Assistance Program</u>. To be eligible for participation in the emergency food assistance program, the applicant shall meet the federal eligibility criteria and requirements established under 7 CFR Chapter II, 251.

## Readopt with amendments Adm 612.12, effective 5-11-05 (Document #8310), to read as follows:

### Adm 612.12 Records.

- (a) In accordance with 7 CFR, Chapter II, section 250.16 (a), each entity receiving donated foods from the surplus distribution section shall maintain accurate and complete records of the following:
  - (1) The amounts and values of commodities refused by school food authorities; and
  - (2) The data and method used to determine the number of needy persons served, including records which show the portion of the operating costs which were derived from tax funds, tax-exempt contributions or other welfare funds;
- (b) In accordance with 7 CFR, Chapter II, Section 250.16 (b), each entity receiving donated foods from the surplus distribution section shall retain the records described in (a) above for a minimum of 3 years.
  - (c) Each entity receiving donated foods from the surplus distribution section shall:
    - (1) Maintain on file a copy of any contract entered into with a food service management company and retain the same for a minimum of 3 years;
    - (2) Post at its facility a copy of the department of agriculture's "...AND JUSTICE FOR ALL" poster;
    - (3) Maintain on file, and retain for a minimum of 3 years, all records of temperature control checks, receipts for rodent control and reports of loss of government foods as are required by federal or state statute or regulation or by the entity's agreements with the surplus distribution section; and
    - (4) Maintain, and retain for a minimum of 3 years, copies of fully executed surplus distribution agreement forms, fully executed copies of supporting documents submitted with surplus distribution agreement forms and all information pertaining to

United States department of agriculture foods on file for 3 years after the close of the federal fiscal year for which they pertain.

### Readopt with amendments Adm 612.13, effective 5-11-05 (Document #8310), to read as follows:

### Adm 612.13 Procedures for Recipients.

- (a) Participants in all programs described in Adm 612 shall:
  - (1) Utilize the first-in, first-out system of inventory rotation known as the "FIFO System"; and
  - (2) Use the carton containing donated commodities marked with the oldest date before using more recently-dated cartons.
- (b) Participants in programs described in Adm 612 shall practice proper handling and storage of all United States department of agriculture donated commodities at all times, according to the standards set forth at 7 CFR Chapter II, 250.14 (b).
- (c) Recipient agencies as defined in 7 CFR Chapter II, Section 250.3 shall pay all service charges assessed in accordance with 7 CFR Chapter II, 250.15 (a) as are specified by the commissioner and approved by the United States Department of Agriculture.
- (d) The amount of the charges noted in (c) above shall be sufficient to cover the average actual cost of handling as specified by the commissioner, after receiving the recommendation of the director according to the criteria set forth in RSA 21-I: 11, VIII.
- (e) The amount of the handling charge for participants in all programs described in Adm 612 except for the emergency food assistance program described in Adm 612.11, for which there will be no handling charge, shall be:
  - (1) \$2.75 per case of food distributed to participants on or before June 30, 2013; and
  - (2) \$3.75 per case of food distributed to participants on or after July 1, 2013.
- (f) A recipient agency as defined in 7 CFR Chapter II, Section 250.3 shall notify the surplus distribution section, or any vendor retained by the surplus distribution section to store or distribute commodities, that it intends to pick up food from the section's facility, or the vendor's facility, at least 24 hours prior to making any pick-up.
- (g) Surplus distribution recipients, and not the state, shall be responsible for loading commodities that are received at the state's surplus distribution facility onto their trucks, for moving those commodities to their destination and for unloading such commodities.

- (h) Surplus distribution recipients, and not the state, or its vendor, if the state has retained a vendor to store or distribute commodities, shall be responsible for unloading from the delivery vehicle those commodities that are received at a location other than the state's surplus distribution facility.
- (i) Surplus distribution recipients shall, at the time commodities are received, count all commodities provided.
- (j) Surplus distribution recipients shall, at the time commodities are received, acknowledge, at a minimum, the following by signing and dating an invoice provided by the surplus distribution section:
  - (1) The types of commodities received;
  - (2) The quantity of each commodity received;
  - (3) The date of receipt;
  - (4) The service charge per commodity; and
  - (5) The total amount of service charges.
- (k) If the person signing the invoice under (j) above does not believe that any of the information contained thereon is accurate, he or she shall so indicate on the invoice.

# Readopt with amendments Adm 612.14 and Adm 612.15, effective 5-11-05 (Document #8310), to read as follows:

### Adm 612.14 Termination.

- (a) A recipient agency as defined in 7 CFR Chapter II, Section 250.3 that fails to yearly renew an agreement with the surplus distribution section shall be suspended from the program until such time as the entity provides the agreement.
- (b) As provided by 7 CFR 250.12 (c) (3), agreements with the surplus distribution section may be terminated by either party for cause upon 30 days notice.
- (c) Either a recipient as defined in 7 CFR Chapter II, Section 250.3 or the surplus distribution section shall have the option to terminate any agreement under these rules provided the party gives 30 days written notice of its intent.

## Adm 612.15 <u>Entities No Longer Wishing to Participate In the Summer Food Service</u> Program for Children or Charitable Institution Programs.

- (a) Entities which have, in the previous year, been involved in the summer food service program for children or charitable institution programs that do not again wish to participate in these programs shall submit to the surplus distribution section a fully executed form provided by the surplus distribution section.
  - (b) On the form noted in (a) above, the entity shall provide:
    - (1) Whether it either:
      - a. Desires to be removed from the surplus distribution section's computer database and not receive future customer mailings; or
      - b. Desires to be notified of the program for following years;
    - (2) The name of the entity; and
    - (3) The name of the representative submitting the form.

## Readopt Adm 613.01 and Adm 613.02, effective 5-11-05 (Document #8310), cited and to read as follows:

#### PART Adm 613 FEDERAL SURPLUS PROPERTY PROGRAM

### Adm 613.01 Purpose and Scope.

- (a) These rules shall apply to applicants for the federal surplus property program described in 41 CFR 102-37 and administered within this state by the surplus distribution section established under RSA 21-I: 12, I. (e).
- (b) The definitions, standards, guidelines and procedures for determination of eligibility for public agencies and eligible nonprofit tax-exempt activities to participate in the federal surplus property program, to receive surplus property, to use this property for authorized purposes and the procedures relative to the administration of the federal surplus property program shall be as set forth in 41 CFR 102-37.

### Adm 613.02 Definitions.

(a) "Federal property records" means all documents in the possession of a donee relating to property received under the federal surplus property program, including the application form and supporting documents submitted therewith, the surplus distribution issue sheet, and any other documents or records relating to the property, its use or disposition.

- (b) "Federal surplus property program" means the program for the distribution of surpluses or commodities donated by the United States government that is handled by the surplus distribution section under RSA 21-I: 12, I. (e).
- (c) "Letter of determination" means a writing from the United States Internal Revenue Service indicating that that the applicant has been determined to be nonprofit and tax exempt under 26 USC Section 501 of the Internal Revenue Code.
- (d) "Surplus distribution issue sheet" means a prenumbered form available from the surplus distribution section, to be signed by a recipient of federal surplus property at the time of distribution of the property, which comports with the requirements of 41 CFR 102-37.260.
- (e) "Surplus distribution section" means the unit of that name within the purchase and property function of the New Hampshire department of administrative services, division of plant and property management, established by RSA 21-I: 12, I. (e).

## Readopt with amendments Adm 613.03, effective 5-11-05 (Document #8310), to read as follows:

### Adm 613.03 Applications and Eligible Donees.

- (a) To be eligible for participation in the federal surplus property program, an applicant shall:
  - (1) Pursuant to 41 CFR 102-37.390, be an entity that falls within the definitions of eligible entities listed in 41 CFR 102-37.380 as further defined in 41 CFR 102-37, Appendix C, "Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations";
  - (2) Submit to the federal surplus property program a fully completed application form described in (b) below;
  - (3) Submit such supporting documentation as is required by (e) and (f) below; and
  - (4) Otherwise meet the standards for eligibility set forth in 41 CFR 102-37.
- (b) Each applicant for participation in the federal surplus property program shall, on a federal surplus property application, certification and agreement form for federal surplus property provided by the surplus distribution section, provide the following:
  - (1) Whether the applicant is either:
    - a. A public agency as defined in 41 CFR 102-37, Appendix C, "Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations";
    - b. An eligible nonprofit organization as described in 41 CFR 102-37.445 and, if so, a description of the type of organization; or
    - c. A service education activity as defined in 41 CFR 102-37.25.
  - (2) The applicant's legal name;
  - (3) The applicant's street address and zip code;

- (4) The applicant's telephone number;
- (5) The applicant's fax number;
- (6) A statement indicating the types of property needed by the applicant;
- (7) The date of the application;
- (8) Beneath a statement of the legal name of the applicant, a printed or typed list of the names of those persons who are authorized and delegated by the applicant to sign documents relating to surplus property, and to acquire property, on behalf of the applicant;
- (9) Next to each name noted under (b) (8) above, the signature of the person noted;
- (10) If the applicant is a nonprofit organization as described in 41 CFR 102-37.445, the signature of the chairman of the board, chief administrative officer, or other officer or officers of the applicant authorized to sign the form on behalf of the applicant, certifying that:
  - a. The applicant agrees to the terms and conditions of the applicant's agreement, which shall be set forth on or incorporated in the form;
  - b. The applicant is a public agency or a nonprofit organization eligible to receive property under 41 CFR 102-37;
  - c. The applicant has approved the delegation of authority described in (b) (8) above;
  - d. Neither the applicant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in the transaction by any federal department or agency and the applicant agrees to the terms of the applicant's agreement regarding "debarment, suspension, ineligibility and voluntary exclusion lower tier covered transactions," which shall appear on or be incorporated in the form, and will fully comply therewith;
  - e. The applicant agrees to the terms of the applicant's agreement relative to civil rights assurances, which shall appear on or be incorporated in the form and will fully comply therewith and with the federal regulations listed at 41 CFR 102-37.445 (d);
  - f. The applicant will abide by all other provisions and requirements imposed on applicants for, and recipients of, federal surplus property under in 41 CFR 102-37;
  - g. All property accepted by the applicant under the federal surplus property program will be usable within the applicant's programs in the state of New Hampshire, is required for its own use to fill an existing need and will not be acquired for any other purpose or for sale; and
  - h. The applicant has funds available to pay the costs of care and handling incident to the donation, including packing, preparation for shipment, loading, transportation and warehousing of property received, and service charges;

- (11) If the applicant is a public agency or service education activity, the signature of the chairman of the board of the agency applicant, or other person authorized to sign the form on behalf of the applicant certifying the matters noted in (b) (10) above; and
- (12) All other information or certifications required by 41 CFR 102-37.
- (c) If the applicant is unable to make the certification required by Adm 613.03 (b) (10) d. above, the applicant shall attach an explanation of the reason to the application form.
- (d) Applicants for the federal surplus property program, and recipients of property under that program shall abide by all provisions and requirements imposed on applicants for, and recipients of, federal surplus property under 41 CFR 102-37.
- (e) Each applicant for participation in the federal surplus property program that is a nonprofit organization as described in 41 CFR 102-37.445 shall, in addition to a fully executed federal surplus property form as described in (b) above, submit to the surplus distribution section:
  - (1) A letter of determination from the United States Internal Revenue Service verifying that the applicant has been determined to be nonprofit and tax-exempt under 26 USC Section 501, commonly known as section 501 of the Internal Revenue Code;
  - (2) A description, in the form of a pamphlet, letter or other writing produced by the applicant describing the specific programs and facilities operated by the applicant;
  - (3) If it is a requirement of one or more of the applicant's programs that it be approved, accredited or licensed, within the meaning of 41 CFR 102-37.390 (b) as further defined in 41 CFR 102-37, Appendix C, "Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations," a current copy of the applicant's approval, accreditation or license or any other form of documentation specified at 41 CFR 102-37.395; and
  - (4) If the applicant conducts programs for older individuals as defined in 41 CFR 102-37, Appendix C, "Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations," a certification from the applicant that the program receives funds for this purpose.
- (f) Each applicant for participation in the federal surplus property program that is a public agency shall, in addition to a fully executed federal surplus property form as described in (b) above, submit to the surplus distribution section:
  - (1) If it is a requirement of one or more of the applicant's programs that it be approved, accredited or licensed, within the meaning of 41 CFR 102-37.390 (b) as further defined in 41 CFR 102-37, Appendix C, "Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations," a current copy of the applicant's approval, accreditation or license or any other form of documentation specified at 41 CFR 102-37.395; and
  - (2) If the applicant conducts programs for older individuals as defined in 41 CFR 102-37, Appendix C, "Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations," a certification from the applicant that the program receives funds for this purpose.

- (g) If the applicant is a service educational activity as defined in 41 CFR 102-37.25, the applicant shall, in addition to a fully executed federal surplus property form as described in (b) above, submit either:
  - (1) A letter from the applicant on its official letterhead, signed by an individual listed on the application form as authorized to act for the applicant, stating that it is affiliated with a specific, named service educational activity designated by the United States Department of Defense as eligible to receive surplus Department of Defense property; or
  - (2) A copy of the applicant's charter, if that charter indicates that the applicant is affiliated with a specific, named service educational activity designated by the United States Department of Defense as eligible to receive surplus Department of Defense property.

## Readopt Adm 613.04 through Adm 613.06, effective 5-11-05 (Document #8310), to read as follows:

### Adm 613.04 Length of Validity of Executed Forms.

- (a) Donees shall retain all federal property records for not less than 3 years, except:
  - (1) Records involving property subject to restrictions for more than 2 years shall be kept for one year beyond the specified period of restriction; and
  - (2) Records involving property in compliance status at the end of the period of restriction shall be kept for at least one year after the case is closed.
- (b) Executed federal surplus property forms as described in Adm 613.03 (b) and the submissions in support of the application described at Adm 613.03 (e) through (g) shall be valid either until the information contained thereon is no longer accurate or until the expiration of the period set forth in (c) below, whichever is earlier.
- (c) Unless the information provided becomes inaccurate at an earlier date, an executed federal surplus property form as described in Adm 613.03 (b) and the submissions in support of the application described at Adm 613.03 (e) through (g) shall be valid:
  - (1) In the case of a public agency, for a period of 3 years from the time of its execution; and
  - (2) In the case of a nonprofit organization, for whichever of the following occurs earlier:
    - a. The conclusion of a period of one year from the date of their submission;
    - b. Expiration of the activity's nonprofit tax-exempt status; or
    - c. If the nonprofit organization's eligibility is dependent upon receiving appropriations, a license or a certification, expiration or termination of the license, certification or appropriation.

#### Adm 613.05 Eligibility and Conditional Eligibility.

- (a) Eligibility of an applicant for donated property shall be determined in accordance with 41 CFR 102-37.
- (b) Pursuant to 41 CFR102-37.420 if an applicant's eligibility is dependent upon receiving licensure, accreditation or approval, and if the applicant is otherwise eligible, it shall be granted conditional eligibility if it submits a written statement from any required approving, accrediting, or licensing authority confirming that it will be approved, accredited, or licensed.
- (c) Pursuant to 41 CFR 102-37.425, conditional eligibility shall not be granted to a potentially eligible nonprofit tax-exempt applicant before the surplus distribution section has received a letter of determination from the United States Internal Revenue Service stating that the applicant is exempt from federal taxation under section 501 of the Internal Revenue Code.

### Adm 613.06 <u>Distribution Procedures</u>.

- (a) An applicant shall acquire and use federal surplus property only for the purposes set forth in 41 CFR 102-37.435.
- (b) At the time property is acquired by a recipient under the surplus property distribution program, the recipient shall indicate on a surplus distribution issue sheet the primary purpose for which the property will be used.
- (c) On a prenumbered surplus distribution issue sheet provided by the surplus property distribution section and comporting with the requirements of 41 CFR 102-37.260, a recipient shall, prior to taking possession of the property:
  - (1) In the case of public agencies, specify whether the property is being used for either:
    - a. Conservation;
    - b. Economic development;
    - c. Education;
    - d. Parks and recreation;
    - e. Public health;
    - f. Public safety;
    - g. Two or more of the categories identified above; or
    - h. Another purpose.
  - (2) With respect to nonprofit institutions or organizations, specify whether the property is being used for either:
    - a. Education purposes;
    - b. Health purposes; or
    - c. The purpose of providing assistance to the homeless.
  - (3) Specify whether the applicant is a service education activity;

- (4) Sign the form, utilizing the signature of a person authorized as a representative of the recipient under Adm 613.03 (b) (8), which signature shall certify the following:
  - a. The prospective donee agrees to the terms and conditions of the prospective donee's agreement, which shall be stated on the reverse of the document, or otherwise incorporated in the document;
  - b. Pursuant to 41 CFR 102-37.445, the donee:
    - 1. Is a public agency or a nonprofit organization meeting the requirements of the Property Act and/or regulations of GSA;
    - 2. Is acquiring the property for its own use and will use the property for authorized purposes;
    - 3. Has funds available to pay all costs and charges incident to the donation;
    - 4. Will comply with the nondiscrimination regulations issued under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), section 606 of title VI of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 476), as amended, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, title IX of the Education amendments of 1972 (20 U.S.C. 1681-1688), as amended, and Section 303 of the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); and
    - 5. Is not currently debarred, suspended, declared ineligible, or otherwise excluded from receiving the property;
  - c. The property being distributed is both usable and needed by the recipient;
  - d. If the donee is not a service education activity, the donee agrees to all of the conditions set forth at 41 CFR 102-37.450; and
  - e. If the donee is a service education activity, the donee agrees to the conditions set forth at 41 CFR 102-37.450, except for those provisions specified as inapplicable to service education activities.
- (d) If the prospective donee is unable to make the certification required by Adm 613.06 (c) (4) b. 5 above, the prospective donee shall attach an explanation of the reason to the surplus distribution issue sheet.
  - (e) Pursuant to 41 CFR 102-37.260, the surplus distribution sheet shall include:
    - (1) The certifications and agreements in 41 CFR 102-37.200 and 102-37.205 and
    - (2) The period of restriction during which the donee must use the property for the purpose for which it was acquired.

Readopt with amendments Adm 613.07, effective 5-11-05 (Document #8310), to read as follows:

Adm 613.07 General Provisions.

- (a) Pursuant to 41 CFR 102-37.450 (a), all property acquired by a donee under the federal surplus property program shall be transferred and accepted on an "as is and where is" basis, without warranty of any kind.
- (b) Pursuant to 41 CFR 102-37.450 (a), a done of property under the federal surplus distribution program shall hold the state and federal governments harmless from any and all debts, liabilities, judgments, costs, demands, suits, actions or claims of any nature arising from or incident to the donation of the property, its use or final disposition.
- (c) In accordance with 41 CFR 102-37.205 (b), a done shall take conditional title to, and all responsibility and liability for, the acquired property upon signing the surplus distribution issue sheet and taking possession of the property.
- (d) Unless another period is provided for in these rules or 41 CFR 102-37, property obtained under the federal surplus property program shall be put into use for the purposes for which it was acquired within one year of receipt and shall continue to be used for such purposes for one year from the date the property was placed in use.
- (e) Pursuant to 41 CFR 102-37.450 (f), property obtained under the federal surplus property program shall be used for an authorized purpose during the period of restriction.
- (f) Pursuant to 41 CFR 102-37.450 (b), if the section determines that property held by a donee is still usable, the donee shall return, at its own expense, any donated property that:
  - (1) Is not placed in use for the purposes for which it was donated within one year of donation; and
  - (2) Ceases to be used for the purposes for which it was donated within one year after being placed in use.
- (g) Except in the case of items acquired by service education activities, passenger vehicles and other items with a unit acquisition cost of \$5,000 or more shall:
  - (1) Be used only for the purpose for which they were acquired and no other purpose;
  - (2) Be put into use for the purposes for which it was acquired within one year of receipt; and
  - (3) Unless a further period of restriction has been specified, be used for the purposes for which they were acquired for a minimum period of 18 months from the date the property was placed in use.
- (h) Pursuant to 41 CFR 102-37.450 (e), property obtained under the federal surplus property program for which the federal government imposes special handling or use limitations or conditions shall be handled and used in accordance with those limitations or conditions.
- (i) Pursuant to 41 CFR 102-37.450 (g) a done shall not cannibalize, as defined at 41 CFR 102-37.25, any item received under the federal surplus property distribution program, or sell, trade, lease, loan, bail, encumber or otherwise dispose of property so received during the period of restriction, or remove it permanently for use outside the state, without first obtaining the permission of the federal government, conveyed in the form of written permission from the surplus distribution section.
- (j) A donee wishing to obtain permission under (i) above shall submit a written request to the surplus distribution section which describes what actions the donee wishes to take and why.

- (1) Physical return of the property to the section;
- (2) Retransfer directly to another donee, the state or a federal agency; or
- (3) Disposal by sale or other means.
- (l) A done returning property under (f) above shall return the property as specified by the surplus distribution section under (k) above.
- (m) The following criteria shall be applied by the section in assessing which of the methods in (k) above will be specified:
  - (1) The nature of the property to be disposed of;
  - (2) The terms of the agreement with the donee;
  - (3) The particular federal requirements or instructions applicable to the property;
  - (4) The potential use of the property to another donee; and
  - (5) The efficiency or cost-effectiveness of the disposal of the property by particular means.
- (n) A donee shall allow the surplus distribution section access to property received through the federal surplus property program to conduct utilization reviews in accordance with 41 CFR 102-37.480 in order to ensure that donated property is being used by the donee for the purpose for which it was donated and in accordance with federal regulations applicable to the property.
- (o) Pursuant to 41 CFR 102-37.55 and RSA 21-I: 11, VIII, the donee shall pay all transportation costs and other direct and indirect costs incurred incident to the donated property, including packing, handling and crating.
- (p) The amount of the charge noted in (o) above shall be sufficient to cover the average actual cost of handling as recommended on an annual basis by the director according to the criteria set forth in RSA 21-I: 11, VIII.
- (q) The charge noted in (o) above shall cover all costs involved in acquiring and distributing the surplus property, including the cost for personnel, transportation, utilities, fuel, telephone, warehousing, storage, compliance, insurance, printing, supplies and travel.

### Readopt Adm 613.08, effective 5-11-05 (Document #8310), to read as follows:

### Adm 613.08 Termination.

- (a) In accordance with 41 CFR 102-37.410, if any donee fails to maintain its eligibility, distribution of property to that donee shall be terminated and any usable property still subject to federal restrictions shall be recovered.
- (b) A donee that fails to comply with any written terms, restrictions, regulations or conditions applicable to the donation shall be terminated in accordance with 41 CFR 102-37.

(c) Unless otherwise provided in the agreement or prohibited under 41 CFR 102-37, a donee may terminate an agreement provided the donee gives 30 days written notice of its intent.